

आयकर अपीलिय अधिकरण
दिल्ली पीठ "एस एम सी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.1166/दिल्ली/2024 (नि.व. 2010-11)
ITA No.1166/DEL/2024 (A.Y.2010-11)

Rajeev Kumar Gupta,
Flat No. 102, Plot No. 25, Sector 3, Vaishali,
Ghaziabad, Uttar Pradesh 201010

PAN: ABZPG-2200-Q

..... अपीलार्थी/Appellant

बनाम Vs.

Income Tax Officer,
Ward-2(2), CGO Complex-II, Kamla Nehru Nagar,
Japur Road, Ghaziabad, Uttar Pradesh 201002

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri R.K. Mehra, Chartered Accountant

प्रतिवादीद्वारा/ Respondent by : Shri Rajesh Tiwari, Sr. DR

सुनवाई की तिथि/ Date of hearing : 09/12/2024

घोषणा की तिथि/ Date of pronouncement: : 27/02/2025

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as 'the CIT(A)') dated 17.01.2024, for assessment year 2010-11.

2. The assessee in appeal has assailed findings of the CIT(A) on jurisdictional issue, as well as on merits. In ground no. 1 and 2 of appeal the assessee has assailed validity of assessment on the ground that notice u/s. 148 of the Income Tax Act, 1961(hereinafter referred to as 'the Act') was never served upon him. The

AR of the assessee pointed that notice u/s. 148 of the Act dated 27.03.2017 (at page 9 of paper book) was sent to the assessee on following address:

Shri Rajeev Kumar Gupta,
Plot No. 8, Sector-3,
Vaishali, Ghaziabad

Whereas as per PAN database address of the assessee is Plot No. 25, Flat no. 102, Vaishali, Ghaziabad. To substantiate his contention he placed on record profile of the assessee giving PAN details and address from official portal of the Income Tax Department. The AR of the assessee submitted that it is a well settled law that assessment proceedings without service of notice u/s. 148 of the Act are bad in law. The AR further pointed that the assessee in First Appeal had raised a specific ground challenging validity of assessment in the absence of service of notice u/s. 148 of the Act, the CIT(A) without deciding the jurisdictional issue, decided appeal of the assessee on merits upholding the addition.

3. Per contra, Shri Rajesh Tiwari representing the department vehemently defending the assessment order pointed that the notice u/s. 148 of the Act dated 27.03.2017 was duly served upon the assessee. He referred to observations of AO in para 1 of the assessment order.

4. Both sides heard, orders of the authorities below examined. At this stage, the assessee has confined his argument only on the jurisdictional issue raised in ground no. 1 and 2 of appeal i.e. the assessment order passed without service of notice u/s. 148 of the Act is bad in law.

5. Before proceeding further it would be relevant to refer to the provisions of section 148 of the Act as there were applicable to AY 2010-11. The requirement of section 148 of the Act is that before making assessment/reassessment u/s. 147 of the Act, the Assessing Officer shall serve on the assessee a notice requiring him to furnish a return of his income within the time specified. The section mandates service of notice u/s. 148 of the Act, not merely issuance of notice. In the instant case, the AO has issued notice u/s.148 of the Act to the assessee on 27.03.2017 on the address: Plot No. 8, Sector 3, Vaishali, Ghaziabad. The contention of the assessee is that the assessee is neither residing on said address, nor the aforesaid address is in the PAN database of the Department. The assessee has furnished information available in PAN database of the Department. As per profile of the assessee available on portal of Department address of the assessee is Plot No. 25, Flat No. 102, Vaishali, Ghaziabad 201010, Uttar Pradesh, India. A perusal of the assessment order reveals that the same has been passed u/s. 144/147 of the Act. Non appearance of the assessee before the AO is attributed to non service of notices issued u/s. 148 and 142(1) of the Act. The notices issued by the AO on wrong address were never served on the assessee. Assessment made without service of mandatory notice u/s. 148 of the Act is bad in law, hence, liable to be quashed.

6. The assessee had raised a specific ground of appeal before the CIT(A) challenging validity of assessment without service of notice u/s. 148 of the Act. I find that the CIT(A) instead of deciding the jurisdictional ground has scuttled the issue by merely observing that notice u/s. 148 of the Act was received by the assessee and the assessee had also filed return in response to u/s. 148 of the Act.

Whereas perusal of assessment order reveal that the assessee did not comply with the notices issued u/s. 148 or notices issued u/s. 142(1) of the Act. The observations of the CIT(A) are contrary to records. In light of the facts on record and non compliance of provisions u/s. 148 of the Act by the AO, I hold that assessment order passed u/s. 144 r.w.s. 147 of the Act is bad in law; hence, the same is quashed.

7. In so far as other grounds of appeal on merits, they have become academic as the assessee succeeds on jurisdictional issue.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on Thursday the 27th day February, 2025.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 27.02.2025

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT/CIT(A)
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar) ITAT, DELHI