IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F' NEW DELHI

BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 818/Del/2014
AY: 2004-05

Prominent Insurance Brokers Pvt. Ltd., **Now known as BRV Developers Pvt. Ltd.,** **C-52, Vivek Vihar,** **Delhi-110095** **(PAN: AADCP3196J)**	**vs**	**ITO,** **Ward 14(4),** **New Delhi.**
(Appellant)		**(Respondent)**

Appellant by: S/Shri Ved Jain,CA & Ashish Chadha
Respondent by: Shri O.P. Meena, Sr. DR

Date of hearing: 03.02.2016
Date of pronouncement: 29.04.2016

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

This is an appeal filed by the assessee against the order dated 25.11.2013 passed by the Ld. CIT(A)-XVII, New Delhi for assessment year 2004-05 wherein the addition of Rs. 20 lacs made by the Assessing Officer u/s 68 of the Income Tax Act, 1961 (hereinafter called 'the Act') has been sustained.

2. The facts, in brief, are that the assessee had filed its return of income on 29.10.2004 declaring Nil income Subsequently, on receiving certain information from the Investigation Wing, the case of the assessee was re-opened and notice u/s 148 of the Act

was issued to the assessee company on 28.03.2011 at the address S-524, Vikas Marg, Shakarpur, Delhi. The assessee, subsequently in September, raised the primary issue that no notice u/s 148 of the Act (dated 28.03.2011) was ever received by the assessee. The assessee raised objection to the proceedings u/s 148 on the ground of non-service of the statutory notice. However, the Assessing Officer proceeded to complete the assessment. The issue of non-service of notice was again raised before the First Appellate Authority but the Ld. CIT (A) also held that non-service of notice was not an issue at all. The assessee also challenged the reassessment proceedings on the ground that the reasons recorded did not warrant reassessment. The assessee's ground of appeal on the issue of validity of the reassessment proceedings based on reasons recorded was also dismissed by the Ld. CIT (A). The assessee also challenged the impugned additions of Rs. 20 lacs on merits but these grounds were also dismissed and the addition was confirmed.

3. Now, in this appeal before us, the assessee has raised as many as 11 grounds of appeal, however, we are proceeding to adjudicate ground no. 3 first which is germane to the entire reassessment proceedings and depending on the outcome of the

fate of this ground of appeal, we shall proceed to adjudicate the remaining grounds as required. Ground No. 3 reads as under:-

> *"On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the assessment under section 147 read with section 148 of the Act as the same has been passed without service of statutory notice under section 148 of the Act."*

4. The Ld. AR submitted that this ground deals with the action of the Ld. CIT (A) in upholding the assessment order passed by the AO, which has been passed without the issuance of statutory notice u/s 148 of the Act.

5. In this regard, it was submitted that the case of the assessee was reopened u/s 148 of the Act. The assessee received a notice dated 09.09.2011 (Paper Book Page 14) from the AO, referring to an earlier notice issued by his predecessor u/s 148 of the Act. The assessee, however, vide reply dated 14.09.2011 (Paper Book Page 15) submitted that the assessee had not received any notice u/s 148 of the Act. Similar notice was again received by the assessee on 07.10.2011 (Paper Book Page 16), which was replied to by the assessee vide its reply dated

14.10.2011 (Paper Book Page 17). The AO, however, rejected the objection raised by the assessee and passed the impugned assessment order. It was further submitted that the issue was again raised by the assessee before the Ld. CIT (A). The Ld. CIT (A), however, upheld the order passed by the AO, holding that what the statute requires is that the notice should be issued to the assessee, and the same was done. The Ld. AR further submitted that it is not disputed that the notice u/s 148 was issued on 28.03.2011, but the same was sent by speed post at the address S - 524, Vikas Marg, Shakarpur, Delhi, which has also been confirmed by the Ld. CIT (A). The address of the assessee company, however, as on the said date was changed to C - 52, Vivek Vihar - I, New Delhi - 110095. All the correspondence made by the AO with the assessee company was at the said address only, as is evident from the various notices issued during the course of assessment proceedings. The Ld AR also submitted that the Ld. CIT (A) has held in Para 5.3 of her order that as per the records, the address of the assessee was S - 524, Vikas Marg, Shakarpur, Delhi. He submitted that in this regard it is pertinent to refer to the order passed by the CIT (A) in assessee's own case for A.Y. 2008-09 dated 28.02.2011, wherein

the address of the assessee is mentioned as C - 52, Vivek Vihar, Delhi - 110095. Therefore, it is clear that the address of the assessee was updated in the records of the Department. Thus, the allegation of the Ld. CIT (A) that it was the duty of the assessee to inform the Department about the change of address was factually incorrect. The Ld. AR submitted that , it was clear that the notice u/s 148 of the Act was issued at a wrong address, and thus, was not served on the assessee, in the absence of which, the order passed by the AO and sustained by the Ld. CIT(A) was bad in law and liable to be quashed. He relied on the judgment of the Hon'ble Jurisdictional High Court in the case of CIT (Central)-I v. Chetan Gupta in ITA No. 72 of 2014, dated 15.09.2015.

6. The Ld. DR placed reliance on the order of the Assessing Officer and the Ld. CIT(A) and submitted that technical defect, if at all, cannot vitiate the entire reassessment proceedings and that on merits also, the addition deserves to be upheld.

7. We have heard the rival parties and have also perused the records. It is mentioned in the assessment order that the notice u/s 148 of the Act was issued on 28.3.2011 which was duly served on the assessee by speed post. The Assessing Officer has further noted in para 1 of his order that the assessee had submitted a letter dated 14.09.2011 and 19.09.2011 stating that it had not received the notice u/s 148 dated 28.03.2011 and vide order sheet entry dated 21.09.2011, a copy of the notice u/s 148 issued on 28.03.2011 was handed over to the representative of the assessee Mr. Manoj Sharma. Thus, the assessee had, in the very preliminary stage, raised the objection of non-service of the statutory notice within the statutory time frame of six years. The Ld. CIT (A) has examined the issue in para 5.1 to 5.3 of the impugned order as under:-

> *"5.1 As per section 149*
>
> (1) *No notice u/s 148 shall be issued for the relevant assessment year:-*
>
> *(a) If four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b);*
>
> *(b) If four years, but not more than she years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year.*

Explanation: In determining income chargeable to tax which has escaped assessment for the purposes of this sub section, the provisions of Explanation 2 of section 147 shall apply as they apply for the purposes of that section.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice u/s 148 is to be served is a person treated as die agent of a non-resident u/s 163 and the assessment, reassessment or re-computation to be made in pursuance of the notice is to be made on hini as the agent of such non-resident, the notice shall not be issued after the expiry of a period of two years from the end of the relevant assessment year.

In view thereof the relevant point here is that notice should be 'issued". In this case, notice *was issued within time.*

5.2 In the case of Mayawati v CIT and Others (2010) 321 ITR 349 (Delhi) the Court observed as under:-

"Reassessment - Notice-Notice u/s 149 - Notice should be issued within prescribed period - Not , necessary that notice should be served within prescribed period - Notice served by inspector of Income tax - information that assessee had shifted her residence and consequent service by speed post - Presumption that notice had been served."

5.3 I have perused the records and seen that notice u/s 148 was issued on 28.03.2011 and was sent by speed post. As per the records *the address of the appellant was S-524, Vikas Marg, Shakarpur Delhi. The AO has stated the notice was served. The notice was not was returned back. It is therefore presumed that it was served. If the appellant had changed its address, it was the duty of the appellant to give information to the Department. The grounds of appeal are therefore ruled against the appellant as the notice was issued on time and in compliance with law."*

8. Thus, the Ld. CIT(A) has, on one hand, concluded that *'issued'* tantamount to '*served*' and, on the other hand, has raised a presumption against the assessee that since the notice was sent through speed post and was not returned, the notice is *'presumed'* to have been served. However, the Department has not been able to controvert the submission of the assessee that the Department was in possession of the correct/new address of the assessee as early as on 28.02.2011 and, therefore, we are of the considered opinion that the Department cannot shy away from its responsibility of duly serving the statutory notice.

9. It is our considered view that whenever a reassessment is sought to be made u/s 147, issuing and serving of a valid notice

u/s 148 is a mandatory precondition. The onus lies on the Revenue authorities to prove that the notice was served on the assessee within the stipulated period. It is only if the said notice is served on the assessee that the assessing officer would be justified in taking up proceedings against the assessee. If no notice is issued, or if the notice issued is shown to be invalid, then the proceedings taken up by the assessing officer would be illegal and void. In this case, it is very much apparent that the notice u/s 148 had not been served on the assessee within the stipulated period. The Assessing Officer can assume jurisdiction to complete the assessment only after valid and legal service of the notice in accordance with law. Unless such notice has duly been served, the Assessing Officer cannot be said to have been clothed with the jurisdiction to pass the assessment order. The mandate of section 148 is that notice should be served on the assessee, by prescribed mode of service, which has undeniably not been carried out in this case. In the absence of a valid service of notice u/s 148, the reassessment order passed by the Assessing Officer is illegal and void *ab initio*. The Hon'ble Delhi High Court in CIT vs Chetan Gupta (I.T.A. No. 72 of 2014) has

discussed the entire law and summarised the legal position in its judgement dated 15th September, 2015 as under:-

> *"(i) Under Section 148 of the Act, the issue of notice to the Assessee and service of such notice upon the Assessee are jurisdictional requirements that must be mandatorily complied with. They are not mere procedural requirements.*
>
> *(ii) For the AO to exercise jurisdiction to reopen an assessment, notice under Section 148 (1) has to be mandatorily issued to the Assessee. Further the AO cannot complete the reassessment without service of the notice so issued upon the Assessee in accordance with Section 282 (1) of the Act read with Order V Rule 12 CPC and Order III Rule 6 CPC.*
>
> *(iii) Although there is a change in the scheme of Sections 147, 148 and 149 of the Act from the corresponding Section 34 of the 1922 Act, the legal requirement of service of notice upon the Assessee in terms of Section 148 read with Section 282 (1) and Section 153 (2) of the Act is a jurisdictional pre-condition to finalizing the reassessment.*
>
> *(iv) The onus is on the Revenue to show that proper service of notice has been effected under Section 148 of the Act on the Assessee or an agent duly empowered by him to accept notices on his behalf. In the present case, the Revenue has failed to discharge that onus.*
>
> *(v) The mere fact that an Assessee or some other person on his behalf not duly authorised participated in the reassessment proceedings after coming to know of it will not constitute a waiver of the requirement of effecting proper service of notice on the Assessee under Section 148 of the Act.*
>
> *(vi) Reassessment proceedings finalised by an AO without effecting proper service of notice on the Assessee under Section 148 (1) of the Act are invalid and liable to be quashed.*

(vii) Section 292 BB is prospective. In any event the Assessee in the present case, having raised an objection regarding the failure by the Revenue to effect service of notice upon him, the main part of Section 292 BB is not attracted."

10. Therefore, on facts of the case and respectfully following the ratio laid down by the Hon'ble Delhi High Court in CIT vs Chetan Gupta (supra), we hold that in absence of valid service of notice u/s 148 of the Act within the stipulated period, the reassessment proceedings are *void ab initio*. Ground no. 3 is allowed and other grounds are dismissed as having become *in fructuous* in view of our adjudication of ground no. 3.

11. In the result the appeal of the assessee is partly allowed.

Order pronounced in the Open Court on 29.04.2016.

Sd/-	**Sd/-**
(N.K. SAINI)	**(SUDHANSHU SRIVASTAVA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: the 29th of April, 2016
'GS'

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

By Order

ASSTT. REGISTRAR