

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

**Before Sh. N. K. Saini, AM And Smt. Beena Pillai, JM**

**ITA Nos. 6852/Del/2014 : Asstt. Year : 2009-10**

Ravinder Joon, S/o Shri Rajender Singh, H.No.46 Gali No. B/10, Ashok Vihar, Phase-III, Gurgaon	Vs	Income Tax Officer, Ward-1(2), Gurgaon
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AJEPJ1394F</b>		

**Assessee by : Sh. Salil Aggarwal, Adv. & Sh. Shailesh Gupta, CA  
Revenue by : Sh. Ved Prakash Mishra, Sr. DR**

<b>Date of Hearing : 02.12.2015</b>	<b>Date of Pronouncement : 04.12.2015</b>
-------------------------------------	---

**ORDER**

**Per N. K. Saini, AM:**

This is an appeal by the assessee against the order dated 27.11.2014 of Id. CIT(A)-I, Gurgaon.

2. Following grounds have been raised in this appeal:

*“1. Whether, on the facts and circumstances of the case and in law, the learned Commissioner (Appeals) was justified in dismissing the appellant’s ground that the assessment order dated 28.12.2011 is illegal, bad in law and void ab initio for want of:*

*i. Assumption of jurisdiction by the assessing officer in accordance with the mandatory*

*provisions of law to proceed with proceedings for making assessment under section 143(3).*

- ii. For want of compliance to the mandatory provisions of section 143(2)(ii) and the proviso thereof by the assessee officer.*
- iii. For want of compliance by the assessing officer to the Principles of Natural Justice.*

*2. Whether, on the facts and circumstances of the case and in law, the learned Commissioner (Appeals) was justified in holding that;*

- i. Since the address given in the return of income was in complete no notice could have been served on the appellant at this address.*
- ii. Since notice sent at the address, 323, Second Floor, Deep Plaza, Near Civil Court, Gurgaon did not come back unserved, which amounts to deemed service of the notice.*

*3. Whether, on the facts and circumstances of the case and in law, the learned Commissioner (Appeals) was justified in holding that 'The point, whether the first mandatory notice u/s 143(2) of the Income Tax Act was served within the period laid down in Proviso to Section 143(2) of the Income Tax Act becomes a non-issue in view of the fact that the case gets covered by provisions of section 292BB of the Income Tax Act' and that too in complete Defiance of the binding decisions of the Hon'ble Jurisdictional High Court of P&H, in case of: CIT Vs Cebon India Ltd. (2012) 347 ITR 583 (P&H).*

*4. Whether, on the facts and circumstances of the case and in law, the learned Commissioner (Appeals) was justified in not considering various submissions and the Decisions of the Hon'ble Supreme Court, Jurisdiction High Court and other High Court and of the Appellate Tribunal relied upon by the appellant in his written submission dated 18.04.2013, dated 10.07.2014 & dated 17.07.2014 filed during the course of hearing of the appeal.*

*5. Whether, on the facts and circumstances of the case and in law, the learned Commissioner (Appeals) was justified in confirming the addition of Rs. 23,66,000/-.*

*6. Whether, on the facts and circumstances of the case and in law, the learned Commissioner (Appeals) was justified in upholding the levy of interest 234A & 234B of the Act.*

*7. All the above grounds are without prejudice to each other.*

*8. The appellant craves leave to modify or withdraw any of the above grounds and also to raise any other ground with permission of the Hon'ble Tribunal.”*

3. The main grievance of the assessee vide Ground Nos. 1 to 4 relates to the validity of the assessment framed without issuing the notice u/s 143(2) of the Income Tax Act, 1961 (hereinafter referred to as the Act) to the assessee.

4. Facts of the case in brief are that the assessee filed the return of income on 30.10.2009 declaring an income of Rs. 1,45,000/-. Later on, the case was selected for scrutiny. The AO claimed that the notice u/s 143(2) of the Act was issued to the assessee on 14.09.2010 and was duly served upon the assessee. The assessment was framed at an income of Rs. 25,11,000/- u/s 143(3) of the Act.

5. Being aggrieved the assessee carried the matter to the Id. CIT(A) and challenged the service of notice within time as per the proviso to Section 143(2) of the Act and denied the service of first mandatory notice by stating as under:

*“In view of above facts and circumstances it is submitted that, so far as the address, in the 1<sup>st</sup> set of notice u/s 143(2), that of Deep Plaza is concerned, the appellant is not aware as to from where the assessing officer got this address. The appellant has no connection of any nature whatsoever and has never used this address for any purpose. Consequently, the notice claimed to have been sent at this address, though the fate of the same is not known, cannot be claimed (in law as well on facts to have been issued what to say of the service. Even otherwise also neither there was any question for service upon the appellant (at this address) nor, in fact, has been served upon the appellant.*

*So far as the 2<sup>nd</sup> notice sent at the village address is concerned, the same having been received back unserved for want of complete address, this notice also cannot even be claimed to have been issued what to say of the service and*

*consequently, there is no question of claiming the same to have been served upon the appellant.*

*In view of above facts and circumstances and the settled law w.r.t. the issuance & the service of notice u/s 143(2), as explained herein after, it is clear that none of these notices cannot be said to even had been issued, and if the notice had not been issued there is no question of service of the same. In fact, no such notice was served upon the appellant within the prescribed limit.*

*Since none of the notices (2 sets) was even sent at the address given in the return (correct address), which was mandatory, it is case of non issuance of the notice at all, what to say of the service and consequently the assessment order dated 28.12.2011 is illegal, bad in law and ab initio void.”*

6. The Id. CIT(A) do not find merit in the submission of the assessee by observing in paras 5.5 & 5.6 of the impugned order as under:

*“5.5 I have considered the facts of the case and gone through the assessment order coupled with the submissions of the appellant. As per the return filed by the appellant, the address mentioned in Ashok Vihar, Phase-III, Gurgaon, Haryana. Since this is an incomplete address, no notice could have been served on the appellant at this address. In order to get over this problem, the AO issued notices u/s 143(2) on 14.09.2010 at the following two addresses ascertained by him from various sources:*

- I. 323, Second Floor,  
Deep Plaza, Near Civil Court, Gurgaon*
- II. VPO Nuna Majra,  
Tehsil Bahadurgar, Jhajjar*

*While the former did not come back un-served, which amounts to deemed service of notice, the latter came back un-served. Subsequently, on 28.01.2011, 143(1)/143(2) notices were issued at the latter address which did not come back un-served. The fact that the notice could be served on the appellant is evident from the following order sheet entries in the assessment record, which are reproduced hereunder:*

*“23.06.2011 – Shri Ravinder Kumar Joon present alongwith Shri Anand Bhardwaj (Advocate) and requested for give another date. The case was adjourned for 15.07.2011 on the request of the assessee.*

*21.11.2011 – Attended Shri Anand Kumar, Advocate & submitted that complete reply that questionnaire could not be prepared and requested for adjournment. Adjourned to 29.11.2011 at 3:00 P.M.*

*29.11.2011 – Attended Shri Anand Kumar, Advocate. The attention of the counsel was drawn to the fact that as per information available with the department, the assessee was deposited Rs. 23,66,000/- in his saving bank account during Financial year 2008-09. The counsel was asked to explain the sources of cash deposits alongwith documentary evidence. The counsel was also asked to give complete reply to the questionnaire. Again last opportunity is provided on 09.12.2011 at 10:00 A.M.”*

*The above reproduced order sheet entries prove the point that the notice u/s 143(2) of the Income Tax Act could be served on the appellant. The point, whether the first mandatory notice u/s 143(2) of the Income tax Act was served within the period laid down in Proviso to Section 143(2) of the Income Tax Act*

*becomes a non-issue in view of the fact that the case gets covered by provisions of Section 292BB of the Income Tax Act, which is reproduced hereunder:*

*“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.”*

*In the light of the provisions of Section 292BB of the Income Tax Act, the only issue to be considered is whether any objection to service of first notice u/s 143(2) within time was lodged by the appellant during the course of assessment proceedings. In order to verify this fact, I perused the assessment folder and found that nowhere during the course of assessment proceedings, the appellant raised any objection to service of first notice within time.*

*5.6 Hence after a careful consideration of the facts of the case, particularly, the provisions of Section 292BB of the Income Tax Act together with the assessment record, I hold that since there was no objection to service of the first notice u/s 143(2) within time, during the course of assessment proceedings, the*

*said service was valid. Accordingly, Ground No. 1(ii) of the appeal is hereby rejected.”*

7. Now the assessee is in appeal. The ld. Counsel for the assessee at the very outset stated that the notice u/s 143(2) of the Act was not issued to the assessee at the address given in the return of income which was the same where the assessee was residing. Therefore, the mandatory requirement of issuing the notice u/s 143(2) of the Act within the period laid down in proviso to Section 143(2) of the Act was not fulfilled by the AO and this fact has been accepted by the ld. CIT(A) also in para 5.5 of the impugned order wherein he has mentioned that the notices were issued to the assessee at addresses mentioned therein. The ld. Counsel for the assessee submitted that the defect of non-issuance of notice is not curable even under the provisions of Section 292BB of the Act. The reliance was placed on the following case laws:

- *CIT Vs Cebon India Ltd. (2012) 347 ITR 583 (P&H)*
- *CIT Vs Mukesh Kumar Agrawal (2012) 345 ITR 29 (All)*
- *CIT Vs Bihari Lal Agrawal (2012) 346 ITR 67 (All)*
- *CIT Vs Dr. Ajay Prakash (2014) 42 Taxmann.com 387 (All)*

8. In his rival submissions the ld. DR strongly supported the order of the ld. CIT(A) and further submitted that the assessee had not taken any objection for non-issuance of notice u/s 143(2) of the Act before the AO and participated in the assessment proceedings. Therefore, the defect, if any, for non service of notice u/s 143(2) of the Act was dispensed with

by participating in the assessment proceedings, as provided in Section 292BB of the Act.

9. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the assessee filed the return of income declaring his address as House No. 46, Ashok Vihar, Phase-III, Gurgaon which is evident from the copy of acknowledgment of Income Tax Return which is placed at page no. 1 and 1a of the assessee's paper book. The same address is mentioned by the AO in the assessment order dated 28.12.2011 and in the impugned order dated 27.11.2014. Therefore, it is clear that the address of the assessee was House No. 46, Gali No. B/10, Ashok Vihar, Phase-III, Gurgaon. However, notices u/s 143(2) of the Act have been claimed to be issued on the following addresses:

- I. 323, Second Floor,  
Deep Plaza, Near Civil Court, Gurgaon.*
- II. VPO Nuna Majra,  
Tehsil Bahadurgar, Jhajjar.*

10. It is therefore, clear that notice u/s 143(2) of the Act which is mandatory for framing the assessment u/s 143(3) of the Act was not issued to the assessee at the proper address. On a similar issue the Honorable Allahabad High Court in the case of CIT Vs Dr. Ajay Prakash (supra) observed in para 6 & 7 of the order dated 12.09.2013 as under:

*“6. We have examined the findings and do not find any good reason to disagree with the findings of CIT (A) and ITAT in which they have held that notices were sent at a wrong address. The finding recorded by Tribunal in para 3 of the order is quoted as under:—*

*"Here we are concerned only with the valid service of a notice issued u/s 148 of the Act. The invalidity of the notice issued under Section 148 renders the entire reassessment proceedings as null and void whereas non service of a notice issued u/s 148 renders the assessment framed as bad in law. in this case there is no doubt that notice u/s 148 was served on an incorrect address and against which the explanation of the department is that the address of the assessee is well known and the Inspector of the department had gone to a correct address to serve this notice, is not tenable in the eyes of the law when the record reveals that the notice was never served upon the assessee. A notice issued u/s 142 (1) was sent back by Shri Alik Farsaiya, the legal consultant on the reasoning that the notice did not belong to any of his clients. Another notice, allegedly, sent and received by Shri Mahesh, the alleged employee of Dr. Ajay Prakash, when it is found that he was not an employee of the assessee, cannot be said to be duly served. The entire records were produced before the ld. CIT (A) and he found the above contention of the assessee to be correct. Unless a particular person is authorized to receive a notice as his agent, any notice served or received by him would not bind the assessee. In this case, nobody participated in the re-assessment proceedings and the objection regarding the service of notice was taken before ld. AO himself. Therefore newly inserted provisions of Section 292-BB would also not help the department. This is trite law that unless a valid notice is served upon the*

*assessee any reassessment framed has to be quashed. In this regard, the binding decision of jurisdictional high court in the case of Madan Lal Agrawal v. CIT 144 ITR 745 (Ald.), inter alia, is relevant and can be cited as relevant decision, being that of the jurisdictional High Court. The ld. AO has refrained from sending his comments even in his reply in remand report despite the fact it was sent to him with a specific direction by the ld. CIT (A) and therefore it is confirmed on record that the AO had nothing to say in the matter. Since the notice was not issued on the known address of the assessee and there being no valid evidence of proper service of this notice, the impugned order passed by the ld. AO becomes bad in laws. Therefore, the ld. CIT (A) has correctly quashed the impugned assessment order. Hence, we cannot allow the appeal of the Revenue and the same is hereby dismissed."*

*7. The findings recorded by the Income-tax authorities that the notice was sent on wrong address and that the person Mahesh alleged to be an employee of assessee was not authorized to receive notice is a finding of fact. We do not find that the questions of law as framed are such that the same are to be admitted."*

11. A similar view has been taken by the Honøble Allahabad High Court in the case of CIT Vs Bihari Lal Agrawal (supra) wherein it has been held as under:

*"No notice under section 143(2) of the Act had been served upon the assessee and the block assessment had been made. The proviso to section 292BB was not applicable in a case where the authority did not have jurisdiction to proceed further and make assessment. Therefore, the block assessment was not valid."*

12. On the identical facts the Honøble Allahabad High Court in the case of CIT Vs Mukesh Kumar Agrawal (supra) held as under:

*“The Supreme Court held in Hotel Blue Moon's case (supra) that if the Assessing Officer, for any reason, repudiates the return filed by an assessee in response to the notice under section 158BC(a) of the Act relating to a block assessment, the Assessing Officer must necessarily issue notice under section 143(2) of the Act within the time prescribed in the proviso to section 143(2). It was further held that by making the issue of notice mandatory, section 158BC, dealing with block assessments, makes such notice the very foundation for jurisdiction. Such notice is required to be served on the person, who is found to have undisclosed income. The requirement of notice under section 143(2) cannot be dispensed with.*

*Section 292BB is a rule of evidence, which validates the notice in certain circumstances. The newly inserted section 292BB provides that where an assessee has appeared in any proceedings 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 the Act that the notice was not served upon him or not served upon him in time or served upon him in an improper manner.*

*In the present case, the Tribunal has returned the findings that the notice under section 143(2) of the Act was admittedly not issued in this case. The assessing authority thus did not have jurisdiction to proceed further and make assessment.*

*We do not find that the non-consideration of section 292BB, which is rule of evidence, and a deeming provision to validate*

*the notice in certain circumstances, will have any effect on the judgment in Hotel Blue Moon (supra). It was held in Hotel Blue Moon's case (supra) that the very foundation of the jurisdiction of the Assessing Officer is on the issuance of the notice under section 143(2)."*

13. From the ratio laid down in the aforesaid judicial pronouncements, it is clear that the issuance of notice u/s 143(2) of the Act is the very foundation of the jurisdiction of the AO for framing the assessment. In the present case, no notice u/s 143(2) of the Act was issued to the assessee at the proper address i.e. address mentioned in the return of income, in assessment order and the order passed by the First Appellate Authority, by the AO. Therefore, the assessment framed without issuing the notice u/s 143(2) of the Act was not valid. In that view of the matter we set aside the impugned order and appeal of the assessee is allowed by holding the assessment order dated 28.12.2011 as *void ab initio*.

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

(Order Pronounced in the Court on 04/12/2015)

**Sd/-**  
**(Beena Pillai)**  
**JUDICIAL MEMBER**

**Dated: 04/12/2015**

\*Subodh\*

Copy forwarded to:

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

**Sd/-**  
**(N. K. Saini)**  
**ACCOUNTANT MEMBER**

**ASSISTANT REGISTRAR**