

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHE-B, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 906/JP/2018  
निर्धारण वर्ष / Assessment Year :2009-10

Charan Singh, Village Gandhula, Post- Gawaldha, Tehsil Tijara, Alwar, Rajasthan	बनाम Vs.	ITO Ward- Bhiwadi
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BXZPS3225A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri O. P. Bhateja  
राजस्व की ओर से / Revenue by : Shri P. P. Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 23/10/2018  
उद्घोषणा की तारीख / Date of Pronouncement: 22/01/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-22, Alwar dated 08.06.2018 wherein the assessee has taken the following grounds of appeal:-

"1. The Id. CIT(A) has grossly erred on the facts and in law in presuming the service of notice u/s 148 on the basis of decision of Hon'ble Delhi High Court, in the case of CIT V. Yamu Industries Ltd.,(2008) 167 Taxman, 67. The said case is not at all applicable to the case of the assessee. In the case of the assessee notice was never served even by affixture and the notice u/s 148 sent through speed post received back by the AO with the postal remarks- "Ukt Number Par Iss Naam Ka Koi Nahi Rehta Hai, Atah Wapas. Sd. Dated

*31.03.2016”, which is placed on file. In absence of service, notice issued u/s 148 deserves to be quashed.*

*2. The Id. CIT(A) has grossly erred on facts and in law in upholding the validity of initiation of proceedings u/s 148 of the Act and assessment based on the basis of such notice ignoring the fact that the notice u/s 148 was issued by the AO. without application of mind, without any tangible material or valid reasons, simply on the basis of his fallacious assumptions, conjencturres and surmises. The proceedings so initiated were illegal, bad in law and void-ab-initio.*

*3. The Id. CIT(A) has grossly erred and failed to appreciate that the Id. Pr. CIT, Alwar did not fulfill the mandate of provisions of sec 151(1) of the Act by giving mechanical approval by simply writing” Yes, I agree”. Notice issued u/s 148 on the basis of such approval is bad in law and deserves to be quashed. The Id. CIT(A) has also ignored the case laws cited before him, in this regard.*

*4. Without prejudice to the above, the Id. CIT(A) has erred in confirming net profit rate of 8 percent applied by the AO without giving any reasons or comparable cases.*

*5. The Id. CIT(A) has grossly erred in confirming the interest charged u/s 234A and 234B by the AO, ignoring the submissions made before him and case laws cited in the written submissions filed during the appellate proceedings.”*

2. In Ground No. 1, the assessee has contended that the Id. CIT(A) has erred in presuming the service of notice u/s 148 where as the fact of the

case is that the notice u/s 148 sent through speed post was received back by the Assessing Officer and remain undelivered, and thereafter, there has been no effort done by the Assessing Officer even to serve the notice by affixture. It was submitted that the service notice u/s 148 is a jurisdictional requirement that must be mandatorily complied with and in the absence of the same, the present proceeding needs to be quashed.

3. It was submitted that in the instant case, the notice u/s 148 was issued on 29.03.2016 sent through speed post by the AO on 30.03.2016 at the address Plot No. 196, sector-9, UIT Colony, Bhiwadi which is the address of one Sh. Bhardwaj through whom the assessee had applied for PAN, was received back by the AO with the postal remarks" ukt number par iss naam ka koi nahi rehta hai, atah vapas. Sd. Dated, 31.03.2016." It was submitted that the envelope returned by the postal authorities containing un-served notice u/s. 148 is available on assessment records, a copy of which has been obtained by the assessee and is enclosed as part of paperbook. It was further submitted that as apparent from the assessment records, there has been no effort made by the AO to serve the said notice. It is apparent from the assessment records that the said notice was never served upon the assessee or any of his authorized agent or even through affixture.

4. It was further submitted that the correct permanent residential address of the assessee was available with the department from the very beginning at which address the assessment order has been passed by the AO and notice u/s. 142(1) was sent through speed-post on 07.10.2016. Therefore, no attempt was made by the AO to serve the notice u/s. 148 upon the assessee at the last known correct address. The A.O. has also not stated anything about service of the notice u/s 148 in the assessment order and the order-sheet maintained by him.

5. It was submitted that it is an accepted legal position that service of notice u/s. 148 is a jurisdictional requirement that must be mandatorily complied with. This is not a procedural requirement. In this regard, reliance was placed on the decision of Hon'ble Delhi High Court in the case of CIT v. Chetan Gupta (2015) 94 CCH 13. The Id AR further placed reliance on the decision of Hon'ble Rajasthan High Court in the case of Mrs. Subhashri Panicker v. CIT (D.B. Income Tax Appeal NO. 202/2015, dated 24.10.2017) wherein the Hon'ble High Court relied on the decision in case of Chetan Gupta (supra) and others, and has allowed the appeal of the assessee admitting non-service of notice u/s. 148 of the Act.

It was accordingly submitted that the notice u/s. 148 may kindly be held void-ab-initio for want of service and assessment may kindly be quashed.

6. Per contra, the Id. DR supported the order of the lower authorities and submitted that the notice u/s 148 has been duly issued and served on the assessee and therefore, there is no irregularity in assumption of jurisdiction by the Assessing Officer u/s 147 of the Act. In support, reliance was placed on the decision of the Hon'ble Delhi High Court in case of CIT V. Yamu Industries Ltd.(2008) 167 Taxman, 67. Further, he supported the findings of the Id CIT(A) which are reproduced as under:

*"5.5 Regarding the appellant's claim of not receiving the notice u/s 148 of the Act, I have considered the judicial rulings by Hon'ble Delhi High Court in the case of CIT vs. Yamu Industries Ltd [2008] 167, where it has been held that notice u/s 143(2) sent by registered post at correct address of assessee had not been received back 'unserved' within period of 30 days of its issuance, there was a presumption under law that said notice had been duly served upon assessee within period of limitation.*

*5.6 Therefore on the basis of factual matrix of the case and judicial rulings as cited above, the issuance of notice u/s 148 of the Act is held valid and accordingly the appellant's grounds of appeal on the issues are dismissed."*

7. We have heard the rival contentions and perused the material available on record. It is a settled legal position that before assumption of jurisdiction u/s 147, the issuance of notice u/s 148 and service of such notice upon the assessee are jurisdictional requirements that must be mandatorily complied with and these are not mere procedural requirement. Any breach of such jurisdictional requirement cannot be read as technical breach which can be rectified but will render the whole reassessment proceedings *void ab-initio* which are liable to be quashed. In the instant case, on perusal of the assessment order, it is noted that the Assessing Officer has stated that after recording the reasons and obtaining necessary approval from the Addl. CIT(A), Alwar, case was reopened by issuance of notice u/s 148 on 29.03.2016 and thereafter, the assessment was completed u/s 147 read with 144 of the Act. As far as the service of the notice u/s 148 is concerned, the assessment order is thus apparently silent and so is the case with the order-sheet which talks about issuance of notice u/s 148 only and nothing has been stated as to whether the same has been duly served on the assessee. Further, the Id AR has contended that the notice so issued u/s 148 has been returned back unserved and is available in the assessment records and a copy thereof placed in the paperbook. Where the initial notice has been received back unserved which is an undisputed fact in the instant case, it is incumbent upon the Assessing officer to take steps in terms of issuing another notice after determining the reasons for non-service and/or alternatively, service the notice through affixture. However, in the instant case, no such further steps have been taken by the AO either in terms of fresh notice or service through affixture. The AO knowing fully well that the

notice u/s 148 has been received back unserved has proceeded ahead with the proceedings and passed the order u/s 147 of the Act. The jurisdictional requirement of service of notice on the assessee has thus not been complied with in, therefore, the resultant proceedings cannot be sustained and liable to be set-aside.

8. Further, we have gone through the decision relied upon by the Id DR in case of Yamu Industries Ltd (supra), however, we find that the said decision doesn't support the case of the Revenue as in that case, notice u/s 143(2) was sent by registered post at correct address of assessee had not been received back 'unserved' and a presumption under law was drawn that said notice had been duly served upon assessee within period of limitation unlike in the instant case, where the notice sent through speed post has been received back unserved and therefore, the question of presumption of service of notice doesn't arise.

9. The decision of the Hon'ble Delhi High Court in the case of CIT v. Chetan Gupta (supra), which has been relied upon by the Id AR, supports the case of the assessee wherein it was held 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 authorized 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 292BB is not attracted. "*

10. In light of above discussions, in absence of service of notice issued u/s 148 on the assessee, the reassessment proceedings completed u/s 147 r/w 144 *ex-parte* qua the assessee deserved to be quashed and are thus set-aside.

11. In view of the above, other grounds of appeal raised by the assessee become infructious and thus have not been adjudicated upon.

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

Pronounced in the Open Court on 22/01/2019.

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/01/2019

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Charan Singh, Alwar, Rajasthan
2. प्रत्यर्थी / The Respondent- ITO, Ward- Bhiwadi
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 906/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar



