

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.02(Asr)/2017
Assessment Year:2005-06

Sh. Shridhar Bedi through Vs. Income Tax Officer
Legal Heir Smt. Sonil Bedi Ward -3, Phagwara
Bedian Mohalla, Khalwara
Gate, Phagwara

PAN:AANPB6262C

(Appellant)

(Respondent)

Appellant by: Sh. Gunjeet Singh Syal (Adv.)
Respondent by: Sh. A.N. Mishra (Ld. DR)

Date of hearing: 17.05.2018
Date of pronouncement: 15.06.2018

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee/Appellant, on feeling aggrieved against the order dated 17.10.2016, impugned herein, passed by the Ld. CIT(A)-2, Jalandhar, u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The assessee has raised the following grounds of appeal.
 - “1. (a) That under the fact and circumstances of the case, the proceedings initiated by the Ld. AO are bad in law and without and/or in excess jurisdiction & consequently reassessment order passed by him u/s 147 should be quashed and annulled.

(b) That the Worthy CIT(A)-2, Jalandhar has failed to appreciate that the reassessment order is void abinitio, as the information as to land sold by assessee having emanated in the search of SI Parminder Singh & Others of Kapurthala, assumption of jurisdiction u/s 148 was bad in law. This proposition of law is settled by jurisdictional ITAT in case of ITO v/s Arun Kumar Kapoc (2011)140TTJ249(ASR).

(c) That the first appellate authority has failed to appreciate that notice u/s 148 was not served a per law.

(d) That without prejudice to the above, even otherwise initiation of proceedings u/s 147/148 was not warranted in the facts and circumstances of the case.

2. That on facts and circumstances of the case, the reassessment order u/s 147 is bad for non pleading of Legal Heir of the assessee. Non service of statutory notices or assessment order also vitiates the assessment.
3. That the First Appellate Authority failed to appreciate that non issue/service of statutory notice invalidates reassessment order u/s 144.
4. That the authorities below failed to appreciate that the land in question is not a capital asset much less to be brought to tax under the head Income from Capital Gain.
5. That the reassessment order has been passed in violation of principle of natural justice.
6. That the AO has estimated the cost of acquisition on the lower side.
7. That the assessee was entitled to benefit of section 54F.
8. That interest u/s 234B has wrongly been charged.
9. That penalty u/s 271(1)(c) has wrongly been initiated.
10. Any other ground with the permission of the bench.”

3. The brief facts of case are that the proceedings u/s 148 have been started on the basis of information that the assessee has sold the land measuring 12 Kanals 5 marlas in Phagwara for Rs.45,93,750/- on 02.03.2005 during the financial year 2004-05 and capital gain arose on such sale of property. The assessee has filed his return of income declaring income of Rs.3,89,311/-

for the Asst. Year 2004-05 on 10.07.2007 and the case was assessed u/s 143(3) of the I.T. Act on dated 02-09-2009 at the returned income and Rs.10,000/- as agricultural income. During the course of assessment proceeding u/s 143(3), it was observed that capital gain on the said sale has not been disclosed by the assessee, hence notice u/s 148 was issued on 29th March, 2012 in the name of the assessee, which claimed to be served through affixture on 31.03.2012 at his last known address but in response to the aforesaid notice, no return was filed, therefore the notice u/s 142(1) of the Act as claimed to be served through affixture on 29th May, 2012, which also not yielded any result. However thereafter, it was noticed by the Assessing Officer that the assessee had died, accordingly the proceedings were initiated against the only legal heir of the assessee i.e. Smt. Sonil Bedi (daughter of deceased assessee) while issuing notice u/s 142(1) dated 18.02.2013, which also claimed to be served through affixture only . Even in response to this notice dated 18.02.2013 as well, neither any return of income was filed nor any body attended the proceedings. In view of the aforesaid facts, the Assessing Officer finding no alternative framed the assessment u/s 144 of the Act and added the amount of Rs.45,93,750/- in the income of the assessee as long term capital gain on the sale of property by the assessee .

4. The assessee preferred the first appeal before the Ld. CIT(A), who vide order dated 17.10.2016 dismissed the appeal

of the assessee and thereafter, the assessee preferred the instant appeal which is under consideration.

5. At the outset, the assessee emphasized on the grounds No.1(c), 2 and 3, which relates to the non-service of notice u/s 148 and 142(1) of the Act as per law. The Ld. AR argued that in the instant case, the assessee had already expired on 16.05.2010, however, the AO had issued notice dated 29.03.2012 u/s 148 of the Act in the name of the deceased assessee, which claimed to be served through affixture on 31-03-2012 and thereafter, notice u/s 142(1) dated 29.05.2012 was issued which also claimed to be served through affixture on 29.05.2012. It is clearly reflects from para No.2 of the assessment order that notice u/s 148 of the Act was issued on 29.03.2012 and was served through affixture on 31.03.2012. It is further reflects from the assessment order that the subsequent notice u/s 142(1) was served through affixture upon the legal heir of the assessee. It is admitted fact that no notice u/s 148 and 143(2) of the Act in the name of the legal heir Smt. Sonil Bedi was ever issued, therefore, the assessment framed by the AO on the basis of notice issued u/s 148 of the Act in the name of (deceased assessee) is not only invalid but also vitiate the entire proceedings and hence, the addition is liable to be deleted. The Ld. A R also relied upon various judgments inter-alia CIT Vs Ramendra Nath Gosh {1971(71) ITR 888}, Calcutta Discount Co. Ltd. Vs. ITO {1961 (4) ITR 191 SC}, Narayan Chettv Vs ITO {1959(35) ITR 383 SC}, etc.....

6. On the other hand, it was argued by the Ld. DR that it clearly reflects from the assessment order that the Assessing Officer initially issued the notice in the name of the assessee, however, after coming to know that assessee has already died, impleaded the sole legal heir i.e. Smt. Sonil Bedi (daughter of deceased assessee) and issued notice u/s 142(1) on 18.02.2013 by way of affixture, however, the Assessing Officer did not receive any response from the assessee's side and in that eventuality the assessing officer finding no option, framed the assessment u/s 144 of the Act. Even otherwise, the Ld. CIT(A) thoroughly considered the submissions of the assessee as well as assessment order in this regard and finally held that the notice has been served on the last known address by affixture and the legal heir to the appellant have been brought on record, since the fact of demise of the appellant was brought to the notice of the AO, therefore, considering all the factors, the reassessment proceedings have been validly initiated by duly serving the notices.

7. We have gone through the relevant records and the orders passed by the authorities below and also considered the rival submissions of the parties and chronological dates and events which are very much important for proper disposal of the instant case, reproduced herein below.

10.07.2007: Return of Income filed at Rs.3,89,311/-

25.08.2007: Assessment u/s 143(3) framed.

- 12.10.2009: Notice u/s 133(6) issued by ACIT, CC-1, Jalandhar (Copy at page 15-16 of PB)
- 21.10.2009: Summon u/s 131 for personal attendance (Copy at page 17 of PB)
- 16.05.2010: Date of death of Shridhar Bedi (Copy at page 13 of PB)
- 29.03.2012: Alleged Notice u/s 148 issued in the name of deceased Assessee.
- 31.03.2012: Alleged Affixture of Notice u/s 148
- 29.05.2012: Alleged Notice u/s 142(1) served through affixture on deceased Assessee.
- 18.02.2013: Alleged Notice u/s 142(1) served through affixture on L/H Sonil Bedi.
- 18.03.2013: Alleged Assessment u/s 144 r.w.s.147 of the IT Act.

From the chronological dates and events, it is clear that the assessee had expired on 16th May, 2010 which although was not in the knowledge of the Revenue Department, however, the notice u/s 148 was issued on 29th March, 2012 in the name of the deceased assessee which claimed to be served by affixture on 31st March, 2012 and again the notice u/s 142(1) claimed to be served through affixture on 29-05-2012 upon the deceased assessee and thereafter, getting knowledge about the factum of the death of the assessee, the Assessing Officer initiated the proceedings against the legal heir of the assessee i.e. Smt. Sonil Bedi and issued a notice u/s 142(1), which also claimed to be served on 18.02.2013 through affixture only and thereafter finding no response from the legal heir, the Assessing Officer framed the assessment u/s 144 of the Act. It is admitted fact of the case that the initial notice u/s 148 was issued in the name of the deceased assessee and was served through affixture only

and thereafter notice u/s 142(1) was also served to the deceased assessee on 29.05.2012 through affixture only and thereafter notice u/s 142(1) dated 18.02.2013 was also served to the sole legal heir of the deceased assessee through affixture only which goes to show that the Assessing Officer never tried to issue the notice under ordinary circumstances or by way of ordinary service.

7.1 Rules of the Code of Civil Procedure, 1908 (hereinafter called the CPC) are applicable for issuing and service of the notices under the Income Tax Act, therefore, the relevant Rules are reproduced herein below for the sake of convenience and brevity.

7.2 Rule-1 of Order V of CPC, enumerates the procedure for issuing the summons and according to the rule-10 of Order-V of CPC, service of summon(s) shall be made by delivering or tendering a copy thereof signed by the judge or such officer as he appoints in this behalf, and seal of the Court.

7.3 Rule 17 of order V further enumerates the procedure when defendant refuses to accept the service, or cannot be found. Rule 17 further mandates that where the defendant or his agent or such other person as aforesaid refuses to sign the acknowledgement, or where the serving Officer, after using all

due and reasonable diligence, cannot find the aforesaid person, who is absent from his residence at the time when service is sought to be effected on him at his residence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept the service of the summons on his behalf, nor any other persons on whom service can be made, the serving officer shall affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant ordinarily resides or carries on business or personally works for gain.

7.4 Further Rule 20 of order-V speaks about the substituted services, according to this rule, when the Court is satisfied that there is a reason to believe that the defendant is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, the Court shall order the summons to be served by affixing a copy thereof in some conspicuous place in the Court and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit.

7.5 The mandate of Rule-1, 17 & 20 of the Order -V is that attempt should be made by the Assessing Officer for serving the notice in the ordinary way and if the notice cannot be served in the ordinary way on the reason that the Assessee cannot be

found, after using all due and reasonable diligence and there is no likelihood of his being found at the residence within a reasonable time and there is no agent empowered to accept service of the summons on his behalf, nor any other person on whom service can be made, and the Assessing Officer is satisfied that there is a reason to believe that the Assessee is keeping out of the way for the purpose of avoiding service, or that for any other reason the summons cannot be served in the ordinary way, then only the Assessing Officer can order for service of summons by way of affixing a copy thereof in some conspicuous place as defined under Rule 20 of order-5 of the CPC but not otherwise .

7.6 From the assessment order, it does not reflect that the Assessing Officer had ever tried to issue and serve the alleged notice(s) in ordinary way and after exhausting ordinary attempt, while recording the reasons, adopted the substituted service by way of affixture upon the deceased assessee. As it is clearly reflects from the chronological dates and events that notice u/s 148 was issued in the name of the deceased assessee on 29th March, 2012 which claimed as has been served through affixture on 31st March, 2012 and thereafter notice u/s 142(1) of the Act claimed as has been served on dated 29th May, 2012 through affixture on the deceased assessee, creates many doubts with regard to the genuineness of the service of the notice on the deceased assessee because if the notice has been served

through affixture on 31st March, 2012 then certainly the notice server would have used his due and reasonable diligence for not finding the deceased assessee and would have come to the knowledge about the death of deceased assessee and must have communicated the said information to the assessing officer and thereafter the Assessing Officer would had no option except to substitute the assessment proceedings in the name of the legal heir only, however, it is admitted fact that notice 29.05.2012 u/s 142(1) was also served to the deceased assessee by way of affixture and thereafter, getting the knowledge about the death of the assessee, the Assessing Officer initiated the assessment proceeding against the sole legal heir. The notice dated 18.02.2013 u/s 142(1) has also been claimed as served upon the legal heir, through affixture only. While serving the notice through substituted service to the sole legal heir of the assessee, the Assessing Officer never tried to serve the legal heir in the ordinary way, however made an attempt only through substituted service which also create lots of doubts about service and validity of the notices which according to our mind is not mere procedural requirement but mandatory.

7.7 The judgments relied upon by the Ld. AR, in support of assessee's case speaks about one thing only that proper notice u/s 148 of the Act for initiating reassessment proceeding is not a mere procedural requirement but the service of the prescribed notice on the assessee is a condition precedent to the validity of any of the reassessment made u/s 147. It is settled law that if

no notice is issued or if the notice issued is shown to be invalid then proceedings initiated and carried by the Income Tax Officer without a notice or in pursuance of invalid notice would be illegal and void and shall vitiate the entire proceedings.

In the aforesaid analyzation, we do not have any hesitation to hold that in the instant case, no notice has ever been properly served either u/s 148 or 142(1) of the Act upon the deceased assessee or his sole legal heir. Therefore, the Assessment Order under challenge cannot be sustained and impugned order under challenge liable to be set aside under the limb of non-service/invalid notice itself and hence, the order passed by the Ld. CIT(A) is set aside and the addition confirmed by the Ld. CIT(A) stands deleted.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 15.06.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:15.06.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) Sh. Shridhar Bedi, Khalwara Gate, Phagwar
- (2) The Income Tax Officer, Ward-3, Phagwara
- (3) The CIT(A)-2, Jalandhar
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

True copy
By order