

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH**

**BEFORE MS. DIVA SINGH, JUDICIAL MEMBER
AND MS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

ITA Nos. 1262 to 1264/CHD/2016

A.Ys: 2008-09 to 2010-11

Ms. Balwinder Kaur Nijjar,
Wife of Shri Bhupinder Singh Nijjar,
35, Lodge Road, Walsall West Midland,
United Kingdom.

Vs. The Asstt. Director of Income Tax
(International Taxation),
Chandigarh.

PAN No. AKAPN8019L

(Appellant)

(Respondent)

Appellant By : Shri Tej Mohan Singh
Respondent By : Mrs. Chanderkanta, Sr.DR

Date of hearing : 22.05.2017

Date of Pronouncement : 08.06.2017

ORDER

PER MS. DIVA SINGH, JM

By the present three appeals pertaining to 2008-09, 2009-10 and 2010-11 assessment years filed by the assessee, the correctness of the consolidated order dated 27.09.2016 of ld. CIT(A)-43 New Delhi is assailed on various grounds including ground No.1 which is identical in all the years. The same is reproduced from ITA 1262/CHD/2016 hereunder :

“That the ld. CIT(A) has erred in law as well as on facts in upholding the issuance of notice under section 148 and thereafter framing an ex-parte assessment without complying with the requirements of Section 148 of the Act which is illegal, arbitrary and unjustified.

2. The ld. AR initially had sought time to file a Paper Book so as to address the factual aspects as full facts were stated to be not available. In order to address the said request, the parties were required to first bring out what facts relating to ground No. 1 were available on record. In response to the same, ld. AR submitted that the assessee had raised three specific grounds on the jurisdiction aspect before the CIT(A) and the ld. CIT(A) after addressing the facts relating to the same in para 4.1 of his order wherein though the submissions of the assessee are considered, however, concluded in para 4.4 that there was a valid service

of notice. It was his submission that the assessee had stated that 10, Old Jail Road, Amritsar was not the address of the assessee and the correct address of the assessee is 35 Lodge Road, Walsall West Midland, U.K.-W553TY. Thus, the conclusion that it was a valid notice was not correct on facts. The ld. Sr.DR, on the other hand, submitted that notice was served by affixture at the address provided by the assessee in the bank account opening form that it was his submission that it was a valid service of notice. Considering the fact that the impugned order on this aspect is not a speaking order, as reference has been made to the fact that service is by way of affixture dated 25.03.2013 at the address which is stated to be in the bank account opening form. However, we note that no reference in the assessment order passed u/s 144 is made to the specific bank let alone the Saving Bank Account number. Accordingly, after hearing the parties, a prima-facie view was formed that the issue has to be restored on account of scarcity of relevant facts. The ld. AR accepting the suggestion made a prayer that it may be restored to the AO. The Ld. Sr.DR made a vehement prayer that it should be restored to ld. CIT(A). Considering the department's objection, the ld. AR agreed that the issue may be remanded to the CIT(A), however, permission to file fresh evidences, it was submitted, may be granted. Considering the facts of the case, the said request was not opposed by the Sr.DR.

3. We have heard the submissions and perused the material available on record. A perusal of the assessment order shows that assessee is considered to be a permanent resident of U.K. holding British Passport and has been visiting India and investing in properties and has earned income from assured returns from the investments made in the properties. The record shows that as per information obtained from M/s Omaxe Ltd., New Delhi, the nature of payment was considered to be other sums and tax has been deducted at source by M/s Omaxe Ltd. at 15% by taking into consideration Article 12 of the DTCC with U.K. and Section 90 of the Income Tax Act, 1961. As per the information available on record, the total assured return received by the assessee was Rs. 5,53,392/- on which, in the financial year 2007-08, Rs. 94,080/- TDS had been deducted. The facts relatable to ground No. 1 found discussed in the assessment order, have been extracted in para 4.1 of

the impugned order and read as under :

“Notice u/s 148 of the IT Act, 1961 was issued to the assessee on 05.03.2013 after recording the reasons. The notice was served upon the assessee through affixture notice on 25.03.2013 at the address of the assessee as provided in the bank account opening form.

Further since no return was filed in response to the notice u/s 148, notice u/s 142(1) was issued to the assessee on 23.05.2013 and 19.02.2014 requesting her to file the return, however neither any reply was filed nor any return was filed. A showcause u/s 144 was issued and served upon the assessee and a last opportunity was provided for 21.03.2014, however again neither any reply was filed nor did anybody attend. Hence in the light of above circumstances order u/s 144 of the IT Act is being passed as this is a time limitation matter and also the assessee has not cooperated in the assessment proceedings at any point of time.”

4. The assessee assailed the service of notice at the said address on the basis of the following arguments :

“It is submitted that the assessee never resided at 10, Old Jail Road, Amritsar. As such, there has been no service of notice under section 148 which renders the assessment as illegal. There is a jurisdictional defect in the framing of assessments which cannot be cured even by resorting to the provisions of Section 292BB. The address as appearing in the records of the department in Form 26AS is 6, Paddock Gardens, Walsall, GB WS53NZ which address is also appearing in the assessment order. There has been no effort, made by the assessing officer to serve notices at the address as available in the records of the department.

There is no escapement of income as the assessee is not obliged to file the return of income as the assessee has not received, the income as mentioned in the body of the assessment order. Even otherwise, only for argument sake, the income as computed by the Assessing Officer is taken; taxes have already been deducted in excess of the due taxes. As such, resort to the provisions of Section 148 is illegal and uncalled for.

Further, the assessment has been framed under section 144. As already submitted, the assessee has not been served upon any notice whatsoever. In the absence of non service of any notice, the assessee could not have appeared before the assessing officer. Even if the assessment has to be framed under section 144, it is the duty of the Assessing Officer to consider all relevant material gathered and then pass an appropriate order. In the instant case, the Assessing Officer has merely relied upon some information available and has treated the alleged assured return of Rs.5,53,392/-/- having been received from M/s Omaxe as the income of the assessee. He has failed, to consider the bank statements to see whether any income has been credited. Secondly Form 26AS wherein the details of income and tax thereon has been deducted by the deductor shows an income of Rs.46,116/- only on which a tax of Rs.7,840/- has been deducted. The assessing officer relying on extraneous material without referring to the basic documents is not in the spirit of Section 144 renders the assessment void. Copy of Form 26 AS as downloaded as recent as 19th of May 2016 is annexed herewith. Perusal of the same shows that the assessee has an income of Rs.46,116/- and tax of Rs.7,840/- has been deducted. But while framing the assessment, the assessing officer has taken the income at Rs.4,61,160/- on which TDS of Rs.94,080/- has been deducted.

Thus, considering the aforementioned submissions, it is prayed that the assessment framed may please be annulled on legal issues itself.”

4.1. The jurisdiction was upheld by the CIT(A) without addressing the specific arguments of the assessee. The ld. AR in the course of the

hearing has stated that the specific address taken note of by the Department i.e. **10, Old Jail Road, Amritsar** was the address provided long time back while opening an account in Punjab National Bank, Amritsar. It was his submission that the assessee has filed criminal complaints as the amounts deposited and withdrawn etc. in the said bank account by some Mr. A.K.Uppal have been done without the knowledge of the assessee. The issue has been carried right upto the Apex Court. Thus, it was argued that the address at which the notice is stated to have been served by way of affixture, was never the address at which the assessee has resided. This aspect, it was submitted has been argued before the CIT(A) and has not been considered while arriving at a finding. On considering the submissions, we find that none of these facts are coming out from the record. In fact, the Tax Authorities have not even cared to mention the specific bank or the City where the assessee has opened an account and what is the specific Saving Bank Account number. Thus, the occasion to consider the relevance of the address would also need to have facts shown on which date the account was opened. Thus, admittedly full facts are not on record. We also note that reference is made to the fact that service is by way of an affixture. It may not be out of place to refer to the legal position that service by way of affixture is the last resort. It is not the normal mode of service and is resorted to only where all attempts to serve notice through the normal modes have failed. There is no mention in the orders to bring out why this mode of service was resorted to. The issues need to be addressed as the jurisdiction itself has been questioned. Thus, it is necessary to bring on record the circumstances necessitating such an action and whether any other mode of service was deployed before resorting to service by affixture. The assessee is relying upon an address mentioned in Form No. 26AS. We note that no effort has been made to address why notice was not sent to the said address. It is further seen reliance has been placed upon the fact that notice u/s 148 has been stated to have been sent to 35 Lodge Road, Walsall West Midland, U.K.-W553TY. On what date the said notice was sent and served and at whose instance was this address brought on record, is also not coming out from the orders. Since the jurisdiction issue goes to the root of the matter and the foundational fact has to be addressed by way of evidences. The impugned orders are set aside in toto and restored back to the file of the

CIT(A) with a direction to pass a speaking order in accordance with law in each of these appeals after giving the assessee a reasonable opportunity of being heard on the jurisdictional issue and then to proceed to decide the issue on merits, if need be. Said order was pronounced in the Open Court at the time of hearing itself in the presence of the parties.

4. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the Open Court on 08th June,2017.

Sd/-

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

'Poonam'

Copy to:

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

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Asstt. Registrar
ITAT,Chandigarh.