

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

I.T.A. No. 609/DEL/2014
A.Y. : 2003-04

ITO, WARD 6(3),
ROOM NO. 304,
BUILDING,
NEW DELHI

C.R. VS.

M/S MEERUT CREDIT &
LEASING PVT. LTD.
C-108, ABC COMPLEX,
VEER SARVARKAR BLOCK,
SHAKARPUR,
DELHI - 11 092
(PAN: AAACM6570C)

(APPELLANT)

(RESPONDENT)

Department by : Ms. Rashmita, Sr. DR
Assessee by : Sh. Pramod Jain, CA & Sh. Mukul
Gupta, Adv.

Date of Hearing : 26.09.2018

Date of Order : 03-10-2018

ORDER

PER K. NARASIMHA CHARY, J.M.

This is an appeal by the Revenue challenging the Order dated 25.11.2013 in Appeal No. 200/10-11 for assessment year 2003-04 passed by the Ld. Commissioner of Income Tax

(Appeals)-IX, New Delhi (in Short "Ld. CIT(A)"), on the following grounds:-

1. *The order of the learned CIT (APPEALS) is erroneous and contrary to facts and law.*

2. *On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in holding that there is no evidence regarding service of notice u/s 148 despite the fact that copy of speed post receipt dated 31.03.2010 was available in the assessment folder, which was examined by the Ld. CIT (A) and a copy was also forwarded to the CIT(A) vide letter dated 01.05.2013 of the Addl. CIT Range 6, Delhi.*

3. *On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in holding that there is no evidence regarding service of notice u/s 148 by completely ignoring the judgment of the Hon'ble Delhi High Court in the case of CIT vs Yamu Industries Ltd [2008] 167 Taxman 67 (Delhi) wherein it was held that if the notice sent through registered post did not come back unserved than the presumption is that it was validly served.*

4. *On the facts and circumstances of the case & in law, the Ld. CIT(A) failed to appreciate that the notice u/s 148 was sent to the address mentioned by the assessee itself while applying for PAN and it was the responsibility of the assessee to get the address updated in PAN database by applying before the Department through agencies (NSDL/ UTITSL), appointed by the Department to handle PAN applications, alongwith the proof of the new address, as per the requirement of section 139A of the Income Tax act read with Rule 114 of the Income Tax Rules, which the assessee had not bothered to do, thus the assessee cannot now take the benefit of its own mistake of not updating the address.*

5. *On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in admitting additional evidence*

despite the fact that none of the conditions mentioned in Rule 46A have been met.

6. On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in deleting the addition of Rs. 68,17,050/- made by the AO on account of unexplained share application money from an entry operator / unexplained credit entries in bank account, completely ignoring the findings given by the Hon'ble Delhi High Court in case like CIT v N Nova Promoters 342 ITR 169, CIT v NR Portfolio [2013]29 Taxmann.com 291 (Delhi), CIT v N Tarika Properties (ITA No. 2080/2010 dated 28.11.2013) etc wherein the Hon'ble Delhi High Court has clearly held that reopening of assessment is justified in case of information received from the Investigation Wing and the onus is on the assessee to establish identity & Creditworthiness of Creditors and Genuineness of transactions.

7. That the grounds of appeal are without prejudice to each other.

8. The appellant craves leave to add, to alter, to amend or to forgo any grounds of the appeal either before or at the time of the hearing of the appeal.

2. Briefly stated facts are that the assessee filed its return of income on 31.3.2014 for the assessment year 2003-04 declaring NIL income and it was processed u/s. 143(1) of the Act. Subsequently, notice u/s. 148 of the Act was issued on 22.3.2010 for reassessment and since there was no response from the assessee, AO completed the assessment u/s. 144 of the Income Tax Act, 1961 vide order dated 8.12.2010 making an addition of Rs. 68,17,050/-.

3. Assessee preferred an appeal before the Ld. CIT(A) contending that the assumption of jurisdiction by the AO u/s. 147 of the Act was without serving the notice u/s. 148 of the Act is bad in law. Further assessee contended that the addition made by the AO on imaginary grounds and the share application money of Rs. 6817050/- was received through proper banking channels; the identity of the share applicants was proved beyond reasonable doubt. Ld. CIT(A) considered the case at length and recorded that there is no evidence regarding the service of notice in as much as the AO did not issue the notice u/s. 148 of the Act at the latest address of the assessee given in the return of income and while following the precedence, Ld. CIT(A) held that the assumption of jurisdiction by the AO to reopen the assessment was bad in law. On merits also Ld. CIT(A) granted relief to the assessee by deleting the addition of Rs. 68,17,050/-. Revenue is, therefore, before us in this appeal.

4. It is the argument of the Ld. DR that as is evident by the copy of the notice dated 22.3.2010 which the receipt dated 31.3.2010, there is proper service of notice on the assessee at its Maujpur, Yamuna Vihar, Delhi address. As stated, there is sufficient compliance of law, but the Ld. CIT(A) ignored the same. Per contra, the AR brought to our notice the remand report of the Ld. AO at page no. 40-41 of the Paper Book wherein it was stated that the notice was sent to the address of 304, Mayur Vihar, Phase-2, Delhi

address, since the assessee itself admitted such address. On this he submitted in the Remand Report, the AO admitted to have sent the notice to Mayur Vihar address as such it cannot be stated that notice was sent to Maujpur, Yamuna Vihar Address. He further invited our attention to page no. 22-31 of the Paper Book which contains the ITR acknowledgement for AY 2002-03 to 2012-13 wherein the address of the assessee is clearly shown as Maujpur, Yamuna Vihar.

5. We have carefully gone through the record on this aspect as is submitted by the AR and has observed by the Ld. CIT(A), it seems that two notice u/s. 148 of the Act were prepared for two address namely 304-C, Mayur Vihar, Phase-2, Delhi and A-31/131, Mata Mandir, Gali No. 5, Maujpur, Yamuna Vihar, Delhi. The ITR acknowledgement clearly shows that right from the assessment year 2002-03 the AO clearly mentioned that notice u/s. 148 of the Act was issued to the address at Mayur Vihar, Phase-2, Delhi only. It is, therefore, clear that though the DR produced the copy of the notice that was addressed to the assessee at Maujpur, Yamuna Vihar, Delhi, actually, the notice was sent to such address, but it was sent to Mayur Vihar, Phase-2 Delhi address only, which is not the proper and correct address of the assessee.

6. In such a case, we are unable to understand how the observation of the Ld. CIT(A) is wrong that the notice was not sent to latest address of the assessee given in the return of income and

consequently, there is no proper service of notice u/s. 148 of the Act in this case. Ld. CIT(A) followed the binding precedents while reaching the conclusion that there is no valid notice of service in this case. We, therefore, find that the decisions of Hon'ble Delhi High Court in the case of CIT vs. Lunar Diamonds Ltd. - 281 ITR 1, CIT vs. Hotline International Pvt. Ltd., CIT (Central)-1 vs. Chetan Gupta ITA No. 1891/Del/2012 dated 15.9.2015, and CIT vs. Eshaan Holding P. Ltd. (2012) 344 ITR 541 (Del.) are applicable to the facts of the case for the principle that before issue the notice u/s. 148 of the Act, it is expected of the AO to have checked up if there is any change of address because valid service of notice of reopening the assessment is a jurisdictional matter and this is a condition precedent for a valid reassessment. Further, though the correct address of the assessee has been constantly mentioned in the return of income quite for a long time. However, notice was not sent to such address, as a result of which reassessment proceedings and notice u/s. 148 read with Section 147 is illegal, bad in law and without jurisdiction.

7. On a careful consideration of the matter in light of the decisions of the Hon'ble Jurisdictional High Court as relied upon by the AR, we are of the considered opinion that the finding of the Ld. CIT(A) vide paragraph no. 4.2.4 to 4.8 did not suffer any illegality or irregularity and they are firmly entrenched into the facts and record as such while respectfully following the ratio of the decisions

of the Jurisdictional High Court, we hold that the assumption of jurisdiction u/s. 147 by the AO is without proper service of notice and notice u/s. 148 of the Act is bad in law and reassessment proceedings are consequently liable to be quashed. We accordingly, quash the same and confirm the finding of the Ld. CIT(A). Since we have quashed the reassessment proceedings on the legal ground, we are not adjudicating the issues on the merits of the case.

8. In the result, the Appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 03/10/2018.

Sd/-
[G.D. AGRAWAL]
PRESIDENT

Sd/-
[K. NARASIMHA CHARY]
JUDICIAL MEMBER

Date 03/10/2018

“SRBHATNAGAR”

Copy forwarded to: -

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

TRUE COPY

Order,

By

Assistant Registrar,
ITAT, Delhi Benches