

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.424 & 425/Viz/2018
(निर्धारण वर्ष/Assessment Year : 2007-08 & 2008-09 respectively)**

Erramilli Gurunadha Sastry
D.No.50-97-3
Seethammadhara
Visakhapatnam

Vs. Income Tax Officer
Ward-3(2)
Visakhapatnam

[PAN : AACPE5039M]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri GVN Hari, AR
: Smt Suman Malik, DR

सुनवाई की तारीख / Date of Hearing

: 28.08.2019

घोषणा की तारीख/Date of Pronouncement

: 30.09.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

These appeals are filed by the assessee against the orders of the Commissioner of Income Tax (Appeals) [CIT(A)]-10, Hyderabad vide ITA No.0065/CIT(A)-10/2017-18/CIT(A), HYD-10/10196/2017-18 dated 11.06.2018 and ITA No.0095/CIT(A)-10/2017-18/CIT(A), HYD-

10/10195/2017-18 dated 11.06.2018 for the Assessment Year (A.Y.) 2007-08 and 2008-09.

2. In this case, the assessment was completed u/s 144 r.w.s. 147 by an order dated 20.03.2015. For the A.Y. 2007-08, the Assessing Officer (AO) issued the notice u/s 148 on 25.03.2014 and served the notice by affixture in the last known address on 30.03.2014. As there was no compliance to the notice issued u/s 148, subsequently, the AO issued the notice u/s 142(1) along with a letter requiring the assessee to furnish the return in the prescribed format for the A.Y.2007-08. Since there was no response, the AO completed the assessment u/s 144 r.w.s.147 of the Act on 20.03.2015.

3. Brief facts of the case are that it has come to the notice of the AO that the assessee has sold the property admeasuring 127 sq.yds together with AC Sheet admeasuring 250 sft. at D.No.55-6-49/2, Survey No.29 Part of Maddilapalem Village, Visakhapatnam to Sri Maradana Gurumurthy, Tatichetla Palem, Visakhapatnam for a consideration of Rs.4,00,000/- vide registered sale deed bearing No.937/2007 dated 06.02.2007. The market value of the property as per the stamp duty was fixed at Rs.9,34,800/-. Therefore, the AO having found that there was difference in valuation of the

property, issued a letter to the assessee on 22.01.2014 calling for the information with regard to filing of Income Tax Return for the A.Y.2007-08 and the admission of long term capital gains on account of sale of the land. The letter sent to the assessee was returned unserved, since, he was not available in the given address. The AO stated to have caused the enquiries through Inspector and could not locate the whereabouts of the assessee. Therefore, the AO issued the notice u/s 148 and served the notice by affixture on 30.03.2014 on the last known address. Since there was no reply from the assessee, the AO has taken the market value of Rs.9,35,000/- adopting the value determined by the stamp valuation authorities as per Section 50C and allowed the cost of acquisition as per document No.614 of 2005 dated 15.02.2005 and taxed the balance amount of Rs.7,35,000/- under short term capital gains as per the details given below:

Sale Consideration	Rs.4,00,000	
Market Value as per 50C	Rs.9,35,000	(A)
Purchase Cost (doc.No.614/2005, dt.15.02.2005)	Rs.2,00,000	(B)
Total short term capital gain (A)-(B)	Rs.7,35,000	

Accordingly, the AO completed the assessment on total income of Rs.7,35,000/-.

3.1. Similarly for the A.Y.2008-09 also , the AO served the notice u/s 148 by affixture as per the last known address. For the A.Y.2008-09, the assessee has sold one property admeasuring 333.33 sq.yds together with built up area of 750 sq.ft. RCC house situated at D.No.4-46-9/8, Peda Waltair, Visakhapatnam to Shri Andhavarapu Vekata Nagendra Prasad, D.No.16-3-111, Gujarathipeta, Srikakulam for a consideration of Rs.14,36,320/- vide registered sale deed bearing No.4236/2007 dated 19.09.2007. The market value of the said property was determined at Rs.23,54,478/- as per stamp duty.

3.2. The assessee sold another property consisting of site admeasuring 333.33 sq.yds together with built up area of 750 sft. RCC house situated at D.No.4-46-9/8, Peda Waltair, Visakhapatnam to M/s Taiyo Resorts & Developers Pvt. Ltd. for a total consideration of Rs.14,36,320/- vide registered sale deed bearing No.4237/2007 dated 19.09.2007. Thus, it is found that the assessee has sold the two properties with the same Door Number to two different persons for a consideration of Rs.14,36,320/- each and market value of each property was Rs.23,54,478/- as per stamp valuation authorities.

3.3. The assessee is liable for capital gains tax on the properties sold but not filed the returns of income. Therefore, the AO issued letter on 04.03.2013 calling for various details, but there was no compliance from the assessee. Therefore, the AO reopened the assessment by issue of notice u/s 148 on 13.03.2015 and served the notice on 09.04.2015 by way of affixture at the last known address since there was no response, the AO had issued the notice u/s 142(1) and served the same by affixture for which there was no response from the assessee. Therefore, the AO completed the assessment u/s 144 r.w.s. 147 of the Act on total income of Rs.47,08,956/- for the A.Y.2008-09.

4. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeals of the assessee. Before the Ld.CIT(A), the assessee has taken the grounds on merits as well as on technical issues. With regard to non service of notice and consequent validity of assessment framed u/s 148, the Ld.CIT(A) held that the notice u/s 148 is validly issued, hence, dismissed the appeal of the assessee on this ground.

4.1. With regard to the assessment for the A.Y.2008-09 also, the Ld.CIT(A) held that the AO has rightly served the notice by affixture at the last known address, accordingly dismissed the appeal of the assessee on this ground.

5. The common ground for the A.Y.2007-08 and 2008-09 is the notice issued u/s 148 is not in accordance with law which renders the assessment void ab initio. During the appeal hearing, the Ld.AR argued that the AO has not served the notice u/s 148 to the assessee for both the assessment years. The Ld.AR further submitted that since, the notice u/s 148 was not served, the same required to be quashed as void ab initio.

6. On the other hand, the Ld.DR argued that for both the assessment years, the AO conducted enquiries by issue of letters on 22.01.2014 for the A.Y. 2007-08 and on 04.03.2013 for the A.Y.2008-09, calling for the information. The letters sent for both the assessment years could not be served on the assessee and enquiries were caused by the field functionaries of the department and found that the present whereabouts of the assessee were not known. Therefore, the notices issued u/s 148 were served by affixture on the last known address, thus, argued that, since, the notices were served by affixture in the last known address, the same should be treated as valid service, hence requested to uphold the validity of issue of

notice u/s 148 of the Act. In support of the service of the notice by affixture, the Ld.DR produced the copies of the reports of income tax inspectors, wherein, the income tax inspector has given report stating that the notices were served by affixture. Accordingly, the Ld.DR argued that the notices issued u/s 148 are valid, hence requested to uphold the validity of issuance of notices as well as the assessments framed u/s 144 r.w.s. 147 of the Act.

7. We have heard both the parties and perused the material placed on record. We have gone through the material placed before us by the department as well as the assessee. In the instant case, the contention of the assessee is that the notices u/s 148 / 142(1) were not served on the assessee, hence the assessments made u/s 147 are invalid. The department has contended that the whereabouts of the assessee were not known and the assessee did not respond to the letters issued by the department, hence, notices were served by affixture in the last known address, therefore, contended that the notices issued u/s 148 were validly served by affixture. For a query from the Bench, the Ld.DR furnished the report of the inspectors stating that the notices issued u/s 148 were served by affixture. The department could not place any evidence to show that the

notices were issued to the assessee's address i.e. prior to the service by affixture either by post or through notice server to the assessee which could not be served. However, the inspector of Income Tax has given undated report stating that the whereabouts of the assessee were not known and the notices issued u/s 148 was served by affixture. The report does not bear signature of any independent witnesses and the date of service. However, the notices u/s 148 bear the signature of two persons without the name and address of the witnesses. Order V, Rule 12 of Code of Civil Procedure provides that wherever, it is practicable, service has to be affected on the defendant in person or on his agent. Order V, Rule 17 of Code of Civil Procedure further provides that affixture can be done only when the assessee or his agent refuses to sign the acknowledgement or cannot be found. That is, for resorting to affixture, efforts have to be made to serve the notice upon the assessee and only after reaching a finding that the notice cannot be served upon the assessee, the mode of affixture can be resorted. Further Rule 17 of order V of Code of Civil Procedure mandates that an independent local person to be the witness of service through affixture and for the purpose of having been associated with the identification of the place of business of the assessee. In the instant case, the department could not place any evidence to show that the department

has made the efforts to serve the notice in person. There was no evidence of having made the efforts to serve the notice either by post or through notice server. Though there was a report of inspector having served the notice by affixture, there was no panchnama drawn by inspector for service of notice by affixture, specifying the place which is being witnessed by independent witnesses. The notices u/s 148 bear the signature of two witnesses without the details of names and addresses. There was no endorsement on the notices having served the notices by affixture. Without the proper endorsement having served the notice by affixture in the presence of local person identifying place of the assessee, the same cannot be held as valid service. Similarly though the AO has stated to have served the notice u/s 142(1) also by affixture, no evidence was brought on record to show that the notices were served by affixture in the presence of independent witnesses. Perusal of the information shows that there was no independent local person as witness and there is no evidence identifying the place as belonging to the assessee before such affixture. The Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Naveen Chander reported in 323 ITR 49 held that fixation is required to be recorded in accordance with the procedure laid down in the Code of Civil Procedure and where in the report of the inspector or notice server, who claimed to

have affixed the notice, there was no evidence of any independent local person having been associated with the place of the assessee, it was a clear violation of mandate of rule 17 of order V of Code of Civil Procedure which laid down the procedure to serve notice by affixture. It is necessary for the AO to communicate the issue of notice and the pending income tax proceedings to the assessee. Unless the communication reaches the assessee, the purpose of issue of notice cannot be served. Therefore, it is obligatory on the part of the AO to make enquiries regarding present whereabouts of the assessee and to locate the correct address. In the instant case, though the letters have stated to have been issued from 2013 onwards and the correct address could not be located, subsequently, it is observed that the assessment order and the demand notices were served on the assessee on the same address which shows that the department has not made proper efforts or the enquiries to locate the assessee. From the above, it is established that the department did not make proper service of the notice as per the procedure laid down in the Code of Civil Procedure. Since there was no valid service of notice, we hold that the assessment proceedings are invalid and the department has failed to prove the valid service of notice on the assessee before embarking upon the proceedings. Therefore, we have no option except to quash the entire proceedings.

Accordingly, we quash the assessment proceedings and allow the appeals of the assessee.

8. In the result, appeals of the assessee are allowed.

Order pronounced in the open court on 30th September, 2019

<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO) न्यायिक सदस्य/JUDICIAL MEMBER विशाखापटणम /Visakhapatnam दिनांक /Dated : 30.09.2019 L.Rama, SPS</p>	<p>Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) लेखा सदस्य/ACCOUNTANT MEMBER</p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee - Erramilli Gurunadha Sastry, D.No.50-97-3, T.P.T.Colony, Seethammadhara, Visakhapatnam
2. राजस्व/The Revenue - Income Tax Officer, Ward-3(2), Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-10, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
 ITAT, Visakhapatnam