IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.

BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER

I.T.A. No. 414/Asr/2015
Assessment Year: 2012-13

Gunwant Kaur, C/o P.P. Maheshwary Adv. 7, Mini Market, Opp Udang Cinema, Amrik Singh Road, Bathinda [PAN: AAZPK0876B] **(Appellant)**	**Vs.**	CIT, Bathinda. **(Respendent)**

Appellant by	**None**
Respondent by	**Sh. S.M.Surendra Nath Sr.D. R.**

Date of Hearing	**19.04.2022**
Date of Pronouncement	**11.05.2022**

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal was filed by the assessee against the order of the ld. Commissioner of Income Tax (Appeal), Bathinda [in brevity the CIT(A)] bearing appeal no. 204-IT/CIT(A)/BTI/14-15, date of order 08.06.2015, the order passed u/s 250(6) of the Income Tax Act, 1961 [in brevity the Act] for A.Y.2012-13. The

said appeal was arising out by the order of the ld ITO, Ward 1(1), Bathinda, passed u/s 143(3) of the Act dated 20.01.2015.

2. The brief fact is that the assessee received the compensation paid by the improvement trust, Bathinda on account of enhanced compensation of compulsory acquisition of agricultural land measuring 11 bighas and 12 biswas in 49.50 acre scheme. The ld. AO added back 50% of the interest u/s 57(iv) of the Act r.w.s. 56(2)(viii) and added back Rs.15,66,686/-. Aggrieved assessee filed an appeal and the ld. CIT(A) upheld the order of the ld. Assessing Authority (in brevity AO). The assessee also challenged the legal point related to service of notice u/s 143(2) of the Act. The same issue was further upheld by the ld. CIT(A). Both the issues are challenged before us by the assessee.

3. First we dealt with the legal issue challenging the service of notice u/s 148 of the Act. Here, the order of ld. AO is procreated as under:-

> *"1.1 The assessee e-filed her return of income for the assessment year 2012-13 on 05.03.2014 vide acknowledgement No. 117758560050314 declaring an income of Rs. 1,53,180/- and claim of refund at Rs.7,63,220/-. The same was processed at the returned version 30.05.2014. The case was selected for scrutiny through CPC and reasons for selection were income returned is not commensurate with tax paid. Statutory notice u/s 143(2) of I.T.Act, 1961 issued on*

30.09.2014 was duly served upon the assessee on 30.09.2014 through affixture as well as through e-mail.

1.2 The Counsel for the assessee Shri P.P. Maheshwary, Advocate challenged the service of notice u/s 143(2) of I.T. Act, 1961 vide his letter, received in the office on 10.10.2014 with the following submissions:-

"..... Most respectfully it is stated as under: -

1. That the proper service of notice U/s 143(2) is prerequisite of assessment u/s 143(3) & in the instant case no valid service of notice was made as per provision of the Civil Procedure Code.

Notice U/s 143(2) was prepared at the late hour on 30.09.2014 & at emailed about 9.45 pm on 30.09.2014 which was read by assesse on the following day i.e. 01.10.2014 Further more it was held by Hon'ble Delhi high Court in CIT v Vishu & Co.Pvt LTD(2009) 319 ITR 151 (Del) where service of notice under section 143(2) was done by affixture on last day after office hours, it was held that it was not a valid service and hence the assessment done on the basic of such notice is not valid.

Further on merit also this is case of receipt of enhanced compensation on compulsory acquisition of agriculture land which is exempt u/s 10(37) of income Tax Act.

Keeping in view the above submission kindly vacate the notice & stop the proceeding u/s 143(2) as no valid service of notice was made within the stipulated time.

4. The ld. DR filed a written submission on 29.04.2019 which is containing the order of affixture under order V Rule 20 of code of Civil Procedure,1908. [V of 1908]. Copy of the order is annexed:

> *"ORDER OF AFFIXTURE UNDER V RULE 20 OF CODE OF CIVIL PROCEDURE 1908. [V OF 1908]*
> *Whereas I am satisfied that there is a reason to believe that Smt. Gunwant Kaur, 2605, Sucha Singh Street, Mehna Chowk, Bathinda is avoiding the service of notice u/s 143(2) of the Income Tax Act, 1961 for the A.Y. 2012-13 dated 30.09.2014 and the service of the notice is not possible in ordinary way. I therefore, direct that the said notice be served by affixture by affixing the copy there of on the notice board of this office and also upon some conspicuous part of the Business premises / residential house in which the assessee is known to have carried out his business/residence, as per procedure laid down under order V Rule 20 of the code of the C.P.C.1908 (V 1908). Therefore I direct Sh. Nardev Raj, Notice Server alongwith Sh. Ranjit Singh, Inspector of this office to serve the notice by affixture on the last known address of the assessee, "2605, Sucha Singh Street, Mehna Chowk, Bathinda.*
> *Given under my signature and seal of this office.*
> *30.09.2014* *Sd/-*
> *(L.D. Bansal)*
> *Income Tax Officer,1*
> *Bathinda.*
> *Copy of notice also affixed on notice board of this office."*

5. The ld. Assessee also agitated in the ground that the notice was not served. The rejection is laid down in the case of CIT vs. Ramendra Nath Ghosh (1971) 82 ITR 888 and CIT vs. Vishu & Co. Pvt. Ltd. (2009) 319 ITR 151 (Del). Here, we are considering the service of notice for adjudication. The ld. DR considered the

order of the jurisdictional High Court. The submission of the ld. DR is extracted here as follows:

> *"2. Moreover it is settled law that non issue of notice or service of notice, does not affect the jurisdiction of assessing officer if otherwise reasonable opportunity of being heard has been given to the assesse and assessment completed in this case by affording more than reasonable opportunities and date of issue is the date of service of notice .*
>
> *(i) CIT vs JAI parkash Singh 219 ITR 437(SC) 1996.- The lack for a notice does not amount to the revenue authority having had no jurisdiction to assess, but that the assessment was defective by reason of notice not having been given to her. An assessment proceeding does not cease to be a proceeding under the Act merely by reason of want of notice. It will be a proceeding liable to be challenged and corrected." (copy enclosed 1-8)*
>
> *(ii) CIT VS Jasbir singh ITA 253 of 2012(P&H) "There is force in contention of the revenue that once service of notice under Section 148,143(2)and 142(1) of the Act was held to be bad observing that the assessee was no more residing at the last known address and was accessible only through his attorney Jarnail Singh, it was incumbent on the Tribunal not to quash the whole proceedings as it amounted to leaving the assessee go scot-free, though he is liable to pay tax on the capital gains. It is nowhere denied that compensation for compulsory*

acquisition of the land was received by the assessee. As such, he cannot deny his liability to pay long term capital gain tax. Merely because there was some error in service of notices on the assessee, statutory liability of the assessee to pay tax on capital gain was not over. Because of procedural lapses, the assessee should not be a gainer and that too by default to escape his liability. Sequelly, order of the Tribunal also lacks merit. Looking from another angle, default made by the revenue in compliance with the procedure in place for service of the assessee ipso- facto, is not a circumstance to let the assessee go scot free from the taxation regime when his liability of payment of capital gain tax is not questioned. When the proceedings had been started by the Income Tax Officer, Kapurthala-I, Kapurthala but the same were found to be defective on technical and procedural grounds of service of the assessee. liability of payment and capital gains tax which had accrued against the assessee, would not be lost sight of and forgotten, as has been projected by the assessee.(copy enclosed (9-14)

(iii) CWP no 18193 of 2011-VRA Cotton mills (p) Ltd (P&H)-Non-issue of notice or mistake in the Issue of notice or defective service of notice does not affect the jurisdiction of the assessing officer, if otherwise reasonable opportunity of being heard has been given. Issue of notice as prescribed in the Rules constitutes a part of reasonable opportunity of being heard.(copy enclosed)(15-22)."

6. We considered the rival submissions and the documents available in the record. The notice was issued by the ld. AO on dated 30.09.2014 and affixture was done on the same date. Also the notice was served through E-mail. The service of the notice through E-mail is taken as delivered on the same day. We relied the observation of the order of Hon'able High Court of Madras in the case of *Malavika Enterprises v. Central Board of Direct Taxes, [2022] 137 taxmann.com 398 (Madras*)- For time-barring of digitally issued reassessment notices, date on which they were issued by email sent is important and not the date of receipt by assessee.

7. The notice itself is not defective the only question is raised by the assessee the service of the notice. In this term, the ld AO correctly completed the service of notice u/s 143(2) both by affixture and by E-mail.

8. Accordingly, this ground related to service of notice of the assessee is dismissed.

9. Here, we are adjudicating the issues related to fact of the case. In this issue the observation of the ld. CIT(A) is annexed hereunder:

> "*10. As stated earlier in this order, the law on compensation underwent a change w.e.f. 01-04-2005 and subsequently amendment has been brought about in section 56 of the Act which deals with "income from other sources". Vide Finance (No.2) Act 2009, a new sub clause (viii) has been appended to*

section 56(2) which makes income by way of interest received on compensation or enhanced compensation a taxable event on receipt basis w.e.f. 01-04-2010. To effectuate this provision, section 145A(b) was also substituted w.e.f. 01-04-2010 to convey that such interest shall be accounted for and computed on receipt basis. Amendment has also been made in section 57 of the Act which deals with deductions available to the assessee against the income chargeable under the head "income from other sources" by way of insertion of a new sub clause (iv) w.e.f. 01-04-2010. The said sub clause allows a deduction of 50% on interest on compensation pursuant to compulsory acquisition.

11. The purport of all the aforesaid amendment in sections 145A, 56 and 57of the Act is essentially to tax the interest component in the compensation on compulsory acquisition of Urban Agricultural Land. No other intention can be read in these amendments but the sanction to tax the interest component of the compensation on receipt basis. The amended provisions do not qualify the receipt of interest as has been done in the L. A. Act, 1894. The intention is clear in as much as compensation/enhanced compensation has been exempted from taxation as capital gains by the enactment of section 10(37) and interest of all hue and colour on said compensation/enhanced compensation has been brought in the tax net as "income from other sources" on receipt basis by enactment of sections 56(2)(viii) and 57(iv) read with section 145A(b). All the said enactments have been subsequent to the law which was elucidated by the Hon'ble Supreme Court as it stood prior to 01.04.2004. The import of the Ghanshyam's case making the interest u/s 28 of L.A. Act, 1894 taxable as capital gains also cannot be lost sight of.

12. The appellant further draws attention to the Explanatory Notes to the provisions of the Finance (No. 2) Act, 2009 dated 3rd June, 2010 (Circular No. 05/2010) to emphasize that the intention of the aforesaid amendments were to mitigate the undue hardship caused to the assesses by the decision of the Hon'ble Supreme Court in the case of Rama Bai Vs CIT (181 ITR 400) in which it was held that arrears of interest computed on delayed or enhanced compensation shall be taxable on

> *accrual leads. It was thus suggested that the law laid down by the Hon'ble Supreme Court in Ghanshyam's case still holds good and should be followed. This Government is not only misconceived but tendentious as Well. The Hon'ble court while delivering the said judgment in 2009 were conscious of the fact that the law and taxability of enhanced compensation had changed and that their elucidation was on law as it stood prior to 01.04.2004."*

10. We considered the documents available on records and the submission of the assessee & revenue. The Act related to interest on compensation is duly amended from Finance Act (2009) w.e.f. 01.04.2010. This interest is treated as income from other sources in section 56(2)(viii) of the Act vide an amendment w.e.f. 1-4-2010 by the Finance Act (No. 2) Act, 2009 reading here as under:

"income by way of interest received on compensation or on enhanced compensation referred to in clause (b) of section 145A"

The interpretation aforesaid has the legislative acceptance by way of incorporation of Section 145A(b) and 56(2)(viii) of the Acts w.e.f. 1-4-2010 by Finance (No. 2) Act, 2009 whereby now irrespective of system of accountancy being followed by the assessee, the interest on enhanced compensation shall be taxable in the year of receipt.

For considering the hardship of the assessee 50% deduction was allowed section 57(iv) of the Act. So the addition amount of Rs.15,66,686/- was confirmed by both

the authorities. We find no materials to intervene this issue in light of the amended Finance Act, 2009. So, the addition confirmed by the ld. CIT(A) is sustained. Accordingly the appeal of the assessee in this ground is dismissed.

11. In the result, the grounds of appeal of the assessee are dismissed.

Order pronounced in the open court on 11.05.2022

Sd/-	**Sd/-**
(Dr. M. L. Meena)	**(ANIKESH BANERJEE)**
Accountant Member	**Judicial Member**

AKV

Copy of the order forwarded to:

(1)The Appellant
(2) The Respondent
(3) The CIT
(4) The CIT (Appeals)
(5) The DR, I.T.A.T.

True Copy
By Order