IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E': NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER, AND
SHRI O.P. KANT, ACCOUNTANT MEMBER,

ITA No. 669/Del /2012
Assessment Year: 2006-07

M/s Micro Spacematrix Solution P Ltd. 52, Trilokiya Apartments, Plot No, 85 I.P. Extension, Patparganj Delhi	Vs.	The I.T.O Ward – 6(4) New Delhi

PAN : AAECM 3093 L

[Appellant] [Respondent]

Date of Hearing : 29.02.2016
Date of Pronouncement: 27.05.2016

Assessee by : Shri Rakesh Gupta, Adv
Shri Sonil Aggarwal, Adv
Department by : Shri P. DAM Kanunjna, Sr. DR

ORDER

PER CHANDRA MOHAN GARG, JUDICIAL MEMBER

This appeal filed by the assessee is directed against the order of the CIT(A)-IX, New Delhi dated 12/10/2011 passed in first appeal No. 188/08-09 for A.Y 2006-07.

2. The assessee has raised as many as 11 grounds of appeal, out of which, except Grounds Nos. 5, 6 & 7, all other grounds are general in nature, argumentative, supportive to the main grounds and consequential and hence the same require no adjudication at our end. Effective ground Nos. 5 to 7 of the assessee read as under:

> *"5. On the facts and in the circumstances of the case and in law, the ld. CIT(A) was incorrect and unjustified in holding that the assessee was liable to challenge to notice u/s 143(2) even if issued by the AO who does not hold jurisdiction over the assessee.*
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> *6. On the facts and in the circumstances of the case and in law, the ld. CIT(A) was incorrect and unjustified in holding that the notice issued within the statutory time limit of one year from the end of the month in which the return was filed.*
>
> *7. On the facts and in the circumstances of the case and in law, the ld. CIT(A) was incorrect and unjustified in not holding that no notice u/s 143(2) was issued within the permissible period."*

3. Briefly stated, the facts of the case are that the assessee company files its return of income in Circle -6(1) on 31.10.2006 and the ITO, Ward - 32(4) issued notice u/s 143(2) of the Income tax Act, 1961 [for short, 'the Act'] on 19.10.2007. The ITO, Ward- 32(4) subsequently issued letter dated 22.10.2007 to the ITO, Ward 6(1), New Delhi intimating that the case was selected for scrutiny and the assessee had filed return of income in his ward i.e Ward 6(1) vide

receipt No. 36000352 and notice u/s 143(2) has been issued by him [ITA Ward 32(4)] on 19.10.2007. The ITO, Ward 32(4) also forwarded copy of said notice issued u/s 143(2) of the Act to the ITO, Ward 6(1), New Delhi alongwith letter dated 22.10.2007. Thereafter, the ITO, Ward 6(4), New Delhi issued notice u/s 143(2) of the Act on 07.10.2008 fixing the case for hearing on 17.10.2008 and the assessee in its reply vide letter dated 5.11.2008 alleged that such notice was barred by time limit being illegal and out of time and therefore, proceedings may be dropped.

4. However, the AO did not agree with such contention of the assessee and proceeded to complete the assessment u/s 143(3)/144 and 115WE(3) of the Act by treating all the credit balances as per the balance sheet as income. He took the share capital, reserves and surpluses as reduced by rental income, unsecured loans and liabilities as income of the assessee and thus completed the assessment at Rs. 1,92,10,073/- by adding amount of Rs. 1,86,02,274/- to the returned income of the assessee as unexplained credits u/s 68 of the Act. Aggrieved, the assessee preferred appeal before the ld. CIT(A) which was also dismissed on the legal grounds of the assessee wherein the assessee agitated the legal issue challenging the validity, limitation and jurisdiction of the notice u/s 143(2) of the Act. The ld. CIT(A)

dismissed the legal contention and grounds of the assessee by passing the impugned order and appeal of the assessee was dismissed. Now, the aggrieved assessee is before the Tribunal in the second appeal with the main grounds as reproduced hereinabove.

5. We have heard the rival submissions and have perused the relevant material on record. The ld. AR firstly submitted that the legal contention of the assessee are of two-fold, viz., (i) notice u/s 143(2) of the Act was not validly served upon the assessee and (ii) the notice u/s 143(2) of the Act was issued by non jurisdictional AO of Ward - 32(4) instead of jurisdictional AO of the ITO, Ward 6(1), New Delhi. Further, elaborating the facts of the case, the ld. AR submitted that the assessee submitted its return of income for the relevant A.Y 2006-07 on 31.10.2006 and the first notice was received by the assessee on 7.10.2008 wherein date of hearing was fixed for 17.10.2008. The ld. AR further pointed out that as per the provisions of clause (ii) of sub-section (2) of section 143 of the Act, no notice under the said clause shall be served on the assessee after expiry of six months from the end of the financial year in which return is furnished and in the present case return was submitted on 31.10.2006 and notice u/s 143(2) of the Act should have been served upon the assessee on or before 31.10.2007 as per the mandate of the said proviso. The ld. AR further

drew our attention towards page 3 of the assessee's paper book and reiterated the objections filed by the assessee on 5.11.2008 before the AO challenging the validity of the notice. The ld. Counsel drew our attention towards page 5 of the assessee's paper book and submitted that as per the record of the postal authorities, letter at Sl. No. 4 was received on 19.10.2007 but in the same page below the date of receipt has been mentioned as 19.07.2007 which create a doubt regarding report of the postal authorities and document relied by the Revenue for issuance and handing over the notice to the postal authorities. The ld. AR further drew our attention towards page 7 of the assessee's paper book and submitted that letter of the ITO, Ward 32(4), New Delhi dated 22.10.2007 mentioned about the issuance of notice u/s 143(2) of the Act on 19.10.2007 but in the same letter, ITO, Ward – 32(4) informed the ITO, Ward 6(1), New Delhi that the case was selected for scrutiny but the assessee company had filed its return of income for A.Y 2006-07 in Ward of ITO, Ward -6(1). Therefore, he transferred the information of the case for issuance of scrutiny notice u/s 143(2) of the Act to the jurisdictional AO, i.e. the ITO, Ward 6(1), New Delhi. The ld. AR also drew our attention towards page 4 and 5 of the assessee's paper book and submitted that even in the remand report dated 26.2.2010, submitted to the ld. CIT(A) by the ITO, Ward

6(1), New Delhi, it has been mentioned that the ITO, Ward 32(4), New Delhi issued notice on 19.10.2007 fixing the date for hearing on 31.10.2007, thereafter, the case was transferred to the ITO, Ward 6(1), New Delhi vide letter dated 22.10.2007 [supra] which clearly shows that earlier notice dated 19.10.2007 was issued by the non-jurisdictional AO i.e ITO, Ward 32(4) not having jurisdiction of assessment over the assessee.

6. The ld. AR further drew our attention towards page 11 of the remand report dated 19.8.2011 of ACIT, Range – 6 submitted to the ld. CIT(A)-IX and submitted that in the remand report also it was mentioned that the ITO, Ward 32(4), New Delhi categorically stated that the notice has been issued on 19.10.2007 and in the records transferred by him vide letter dated 22.10.2007, proof of dispatch of notice by speed post has been duly placed on record. The ld. AR vehemently pointed out that in second part of para 2 of the said remand report [page 11 of the assessee's paper book], the AO admitted that the said notice did not come back unserved but in the subsequent line he made a presumption that it was effectively served upon the assessee which is not a valid and permissible presumption because the requirement of relevant provisions of section 143(2) of the Act not only requires issuance of notice but proviso to clause (ii) of

sub-section (2) of section 143 of the Act mandates that no notice shall be served on the assessee after expiry of six months in which the return is furnished which mandates the prescribe time limit period. For valid service of notice u/s 143(2) of the Act, mere proof of issuance of notice is not sufficient enough to establish valid service of notice upon the assessee. The ld. AR further pointed out that the above facts emanating from pages 4 to 7 and 11 of the assessee's paper book, clearly shows that no valid notice was issued and served on the assessee u/s 143(2) of the Act on or before 31.10.2007 and the notice dated 19.10.2007 which was issued by a non-jurisdictional AO is not valid as per the ratio of the order of the Hon'ble High Court of Allahabad in the case of CIT Vs. MT Builders Pvt Ltd [2012] 349 ITR 271 [All] and order of the Tribunal ITAT Delhi 'E' Bench dated 12.06.2015 in ITA No. 2358/Del/2012 in the case of Mukesh Kumar Vs. ITO. The ld. Counsel also pointed out that the said notice was issued on the incomplete address as noted by the postal authorities at page 4 of the assessee's paper book and further the service of the said notice has not been established by the Revenue and the presumption of valid service of notice cannot be made in regard to notice issued on incomplete or incorrect address and handed over to postal authorities for service upon the assessee. The ld counsel placed reliance on the

order of the ITAT, Jabalpur, Third Member Bench in the case of ACIT Vs. Vindhya Telelinks Ltd [2007] 13 SOT 233 [TM] and the recent order of the ITAT Ç' Bench, New Delhi dated 12.2.2016 in ITA No. 671/Del/2013 in the case of Shri Harvinder Singh Jaggi Vs. ACIT. The ld. Counsel also vehemently contended that the subsequent notice issued on 7.10.2008 has been issued after 31.10.2007 which was the last date of limitation of issuance of notice and thus the same is clearly time barred and has been issued and served upon the assessee beyond the prescribed time limit period. The ld. AR has further drawn our attention towards the order of the ITAT, Jabalpur Third Member order dated 22.09.2006 in the case of ACIT Vs. Vindhya Telelinks Ltd reported at [2007] 107 TTJ 149 [TM] and submitted that when the pre condition of the relevant provisions of the Act is service of notice for assuming valid jurisdiction for assessment, then the Revenue has to prove that (i) the envelope was correctly addressed to the assessee; properly stamped and dispatched by the AO and handed over to postal authorities for valid service upon the assessee. In the present case, the dispatch as shown by the postal authorities is not reliable as there are contradictory dates mentioned therein and address as noted by postal authorities [page 4 of assessee's paper book] is incomplete and incorrect thus no valid presumption can be made about the eservice of

said notice upon the assessee.

7. The ld. AR further drew our attention towards order of the ITAT Lucknow Bench in the case of ACIT Vs. Ravi Burman reported at [2008] 118 TTJ 122 and submitted that the burden was on the Revenue to prove that the notice was validly served upon the assessee within the prescribed time limit which the Revenue has failed to discharge and in this situation, it would be proper and justified to order the annulling of the assessment order. The ld. AR drew our attention towards pages 12 to 15 of the appeal file and submitted that the first notice dated 19.10.2007 which was issued by non jurisdictional AO was not validly served upon the assessee and subsequent notice dated 7.10.2008 was issued beyond the prescribed the time limit does not establish the validity of scrutiny assessment order as it is mandatory requirement for assuming valid jurisdiction by the AO for passing an order u/s 143(3) of the Act that the notice u/s 143(2) of the Act should be served upon the assessee within the prescribed time limit period. The ld. AR also drew our attention towards the order of the ITAT Delhi 'C' Bench in the case of Shri Harvinder Singh Jaggi Vs. ACIT order dated 12.2.2016 in ITA No. 672/Del/2013 and submitted that the assessee objected before the AO and the ld. CIT(A) regarding jurisdiction and time barring of the impugned notice, but the contentions of the

assessee were not considered and adjudicated properly and provisions of section 292BB of the Act is applicable in A.Y 2008-09 and the case in hand is pertaining to A.Y 2006-07, therefore, the lacunae and omission of the AO cannot be filled up by taking aid of section 292BB of the Act.

8. The ld. AR also placed reliance on the decision of the Hon'ble High Court of Delhi in the case of Hotel Blue Moon reported at 321 ITR 362 and submitted that if the AO without any reason repudiates the return filed by the assessee, then the AO must issue notice u/s 143(2) of the Act within the prescribed time in pursuance to section 143(2) of the Act which has not been done in the present case. Therefore, the assessment order may kindly be annulled on these counts.

9. Replying to the above, the ld. DR contended that the assessee deliberately did not mention and accept the receipt of notice dated 19.10.2007 issued by the ITO, Ward 32(4), New Delhi. The ld. DR further contended that the said notice was handed over to the postal authorities for service upon the assessee, but no postal receipt was issued to the department by the postal authorities because at that point of time postal receipt and tracking delivery number was not issued to the sender. The ld. DR placing reliance on the judgment of the Hon'ble Jurisdictional High Court of Delhi in the case of CIT Vs.

Madhsy Films P. Ltd reported at 175 Taxmann 347 [Del] submitted that where notice issued to the assessee u/s 143(2) of the Act had been dispatched by speed post at the address as per it return and the same has not been received back, it could be presumed that it reached the assessee and if the notice is handed over to the postal authorities for service, then it would be presumed that the notice has been properly served upon the assessee.

10. In the rejoinder, the ld. Counsel for the assessee again drew our attention towards page 5 of the assessee's paper book and submitted that the address written at Sl. No. 4 shows that the notice has been sent to Microspace Matrix Solutions 32/305 Vikram Vihar which is a incomplete address as there are four Vikram Vihars in the country, out of which two Vikram Vihars are in Delhi viz. Vikram Vihar, Lajpat Nagar and Vikram Vihar, Delhi Cantt, New Delhi. The ld. Counsel placing reliance on the decision of the ITAT Lucknow 'B' Bench [supra] submitted that the burden was on the Revenue to prove that the notice was served on the assessee within the prescribed time which the Revenue failed to discharge. The ld. Counsel also drew our attention towards para 7.2 to 7.7 ITAT Delhi Bench order on the case of Harvinder Singh Jaggi [supra] and contended that there are five conditions for service of valid notice and the Revenue should show

receipt of postal authorities or tracking number of post office to establish valid dispatch of notice and if a notice is not returned, then it shall be presumed that it was served properly. The ld. Counsel strenuously pointed out that the presumption can be rebutted by the assessee by filing evidence in support, but rebuttal by merely word of mouth of the assessee is not sufficient to establish rebuttal or presumption and in the present case the copy of the impugned notice dated 19.10.2007 [paper book page 6] contains complete address but on receipt received of postal authorities [paper book page 5] noted incomplete address which shows that the address mentioned on the envelop was incomplete and incorrect this presumption of valid service of notice cannot be made as the assessee has successfully rebutted the presumption.

11. On careful consideration of the facts and in the circumstances of the case, at the very outset, we note that the assessee filed return for the relevant A.Y on 31.10.2006 with ITO, Ward -6(1), New Delhi. Therefore, as per the proviso to clause (ii) of sub-section (2) of section 143 of the Act, notice should have been served upon the assessee on or before 31.10.2007. In the present case, as per the contention of the ld. DR, first notice was issued to the assessee by the ITO, Ward 32(4) on 19.10.2007 and proof of dispatch of notice shows that it was

handed over to the postal authorities for service upon the assessee. Further, it is also the contention of the ld. DR that the said notice did not return back unserved which shows that it was effectively and validly served upon the assessee and in this situation, when handing over of the notice has been shown by the Revenue, then the valid presumption should be drawn that the notice has been served upon the assessee within the prescribed time limitation period which expired subsequently on 31.10.2007.

12. It is well accepted proposition of law that the burden was on the Revenue to prove that notice was validly served on the assessee within the prescribed time limit as per the provisions of section 143(2) of the Act. We further note that as per the dicta laid down by the co-ordinate Bench of Delhi in the case of Shri Harvinder Singh Jaggi Vs. ACIT [supra], five conditions have to be cumulatively fulfilled for a valid service of notice. The relevant operative part of this order of the Tribunal at paras 7.2 to 7.7 is reproduced hereinbelow for ready reference:

> *"7.2 It has been held by various courts that the service of notice by post include service by speed post as well. In the cases of CIT Vs. Silver Streak Trading P. Ltd., (supra) cited by the assessee, it was claimed by the assessee that the return of income was filed on November 30, 1997 and a notice under section 143(2) of the Act was issued by the Assessing Officer*

through speed post on November 28, 1998 but the assessee claimed that said notice was not ever received and a duplicate copy of notice dated October 21,1999 was received by the learned counsel of the assessee, who endorsed the office copy with the remark " time barred notice received" and this was followed by an affidavit by the assessee stating that it had not received any notice prior to the notice dated October 21, 1999. The Hon'ble Court held that in such a case onus was on the Revenue to show that the notice dated November 28, 1998 was in fact served on the assessee within the time prescribed by the law and the Revenue had not been able to discharge its onus either before the Tribunal of before the Hon'ble Court and the appeal of the Revenue was dismissed holding that no substantial question of law arose. In the CIT Vs. Messrs Lunar Diamonds Ltd., (2006) 281 ITR 1 (Del.) again similar issue was raised and the Hon'ble Court has given finding similar to the given in the case of Silver Streak Trading P. Ltd.(supra). 7.3 But on analysis of the facts of the above cited cases, we find that facts of the case of the assessee are different then the cases cited. In the case of Silver Streak Trading P. Ltd.(supra), the Revenue failed to bring on record to suggest that notice dated November 28, 1998 was in fact served upon the assessee on November 30, 1998. The relevant part of the judgement is reproduced as under:

> *"11. In so far as the present case is concerned, it is not the case of the assessed that it ever received notice dated 28th November, 1998. In fact, its case has been that the only notice ever received by it was the one dated 21st October, 1999. In the duplicate copy of the notice dated 21st October, 1999, learned Counsel for the assessed had made an endorsement that he has received the time barred notice. This was followed by an affidavit by the assessed stating that it had not received any notice prior to the notice dated 21st October, 1999. In a case such as this, the onus is clearly upon the Revenue to show that the notice dated 28th November, 1998 was, in fact, served on the assessed within the time prescribed by law. The Revenue has not been able to discharge its onus either before the Tribunal or before us. We, therefore, find that no substantial question of law arises and the appeal is dismissed."*

7.4 Whereas in the present case, the Revenue has provided enough proof that the notice was sent through speed post at the correct address provided in the return of income. Further, in the case of Lunar Diamonds Ltd. (supra), the receipt issued by the postal authorities was only containing name of the assessee and thus it was submitted by the assessee that there was a possibility that the correct address of the assessee might not have been written on the envelope and therefore the notice was not served to the assessee, but in present case the correct address was mentioned in the receipt issued by the postal authorities. Thus the cases cited by the assessee are distinguishable on facts. 7.5 In the case of Milan Poddar Vs CIT reported in [2012] 24 taxmann.com 27, the Hon'ble High Court of Jharkhand has dealt the issue of notice of service though speed post and rebuttable presumption of the service and held that when the dispatch has been proved by the receipt number of speed post and the notice has been sent at correct address, it is presumed that the notice was delivered to the assessee. The relevant paragraph of the judgement is reproduced as under:

> *14. From a bare perusal of the order-sheets, shown to us by the assessee, started from dated 24.10.2007, it is clear that in the order- sheet dated 24.10.2007, on the top of it, the name and address of the assessee was mentioned and thereafter it was ordered that notice under Section 143(2) be sent. The notice, in fact, was sent on 24/25.10.2007 and its receipt number is given in the order of the Assessing officer which is, receipt no. 4544 and "Speed post" number is also given which is EE875408254 IN, dated 25.10.2007. So far as dispatch of the notice under Section 143(2) of the Act of 1961 is concerned, that question is fully proved.*
>
> *15. Learned counsel for the appellant vehemently submitted that mere proof of dispatch of post is not the proof of service of the notice upon the receiver.*
>
> *16. In a matter of service through post, there are certain ways whereby notices are sent through department of post. In this case, as we have already discussed that in the order sheet, name and address of the assessee was mentioned and address is wrong was not the plea of the assessee. Therefore, Department sent the notice under Section 143(2) of the Act to the Assessee on the assessee's*

address, and that too through Speed Post which is more reliable mode therefore, it is required to be presumed that notice was delivered to the addressee. The notice sent through "Speed-post" did not return to the Income Tax Department as undelivered and since Income Tax Department sought information from the Postal Department with respect to the actual service of the post upon the assessee after the expiry of a period of three months and by that time, the record was weeded out, the only evidence, which could have been produced by the Department, is the proof of the dispatch of the notice and not of not-receiving the said post bade by the Department. Against this evidence of Department, there is only word of mouth of the assessee that he did not receive the notice under Section 143(2) of the Act. In that fact situation, the Assessing Officer as well as the Tribunal were fully justified in accepting the contention of the Income Tax Department that notice was duly sent and since it was not returned back as undelivered, it was deemed to have been delivered to the assessee.

7.6 As regards to the rebuttal of the presumption, the Hon'ble Court has already held that only word of mouth of the assessee that he did not receive the notice are not sufficient for establishing rebuttal of presumption. Further, the Hon'ble Court has held that the notice has not been returned back, it is presumed to be served. The relevant paragraphs are reproduced as under:

17. So far as dispute with respect to the interpretation of the "Post", "Registered Post" and "Speed Post" are concerned, the Tribunal has considered the issue in detail. We would like to quote the relevant paragraphs from the order of the Tribunal, which are as under :-

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26. The aforesaid judgments lay down in no uncertain terms that, in terms of section 27 of the General Clauses Act, unless and until the contrary is proved by the addressee, service of notice is deemed to be effected at the time at which the letter would have been delivered in the ordinary course of business when it is sent to the addressee at his address by registered post. Details given in the assessment order as also receipt of speed post make it clear that all the conditions stipulated by section 27 of the General Clauses Act are satisfied and hence service of the impugned notice would be deemed to have been effected well before the expiry of time limit stipulated by section 143(2) as the said notice was sent several months before the expiry of period stipulated by the time provision of section 143(2).

27. Non-rebuttal of Statutory Presumption: The legal fiction created by section 27 of the General Clauses Act by which service is deemed to have been effected would continue to be operative unless the party denying the service proves that it was not really served and that he was not responsible for such the absence of proof by the party denying the service that he has not received it or that he was not responsible for its non-service, the legal fiction created by section 217 of the General Clauses Act

cannot be displaced. In V Raja Kumari v. P Subbararna Naidu AIR 2005 SC 109, the Hon'ble Supreme Court has, in the context of section 138 of the Negotiable Instruments Act, held as under:

"No doubt Section 138 of the Act does not require that the notice should be given only by "post". Nonetheless the principle incorporated in Section (quoted above) can profitably be imported in a case where the sender has dispatched the notice by post with the correct address written on it. Then it can be deemed to have been served on the sendee unless he proves that it was not really served and that he was not responsible for such non-service. Any other interpretation can lead to a very tenuous position as the drawer of the cheque who is liable to pay the amount would resort to the strategy of subterfuge by successfully avoiding the notice."

28. In the case before us, the assessee has led no evidence to prove that the impugned notice was not received by him or that he was not responsible for its non-service. The details given by the AO in the assessment order included not only the receipt no. under which speed post was sent but also the tracking code. Perusal of the assessment order shows that the AO had apprised the assessee of the aforesaid facts in the course of assessment proceedings also. It was therefore for the assessee to adduce relevant evidence to prove that the said notice was not served upon him and also that he was not responsible for its non-service. However, the assessee has not adduced any evidence to prove so in spite of the fact that he could have done so with the help of details made available in the assessment order and also in the notice issued to him in the course of the assessment proceedings. Additionally, the AO has verified his records and found that the impugned notice was not received back in his office. In this view of the matter, the legal fiction by which the service of the impugned notice is deemed to be effected on the assessee stands on a much stronger footing.(emphasis supplied) We are in full agreement with the reasons given by the Tribunal with respect to the interpretation given by the Tribunal on various issues decided by the Tribunal which we have quoted above.

7.7 Thus, we can summarize that for a valid service of notice following conditions should be fulfilled:

(i) the notice should have been sent through any of the modes mentioned in section 282 of the Act

(ii) The name and address should be correctly written over the notice and the envelope containing the notice and the envelope should be delivered to the postal authorities for service.

(iii) The Revenue should show the receipt of postal authorities and/or tracking number of post office to establish valid dispatch of notice,

(iv) If the notice is not returned then it shall be presumed that it was served validly.

(v) The presumption can be rebutted by the assessee by filing evidences in support but the rebuttable by merely word of mouth of the assessee that he did not receive the notice are not sufficient for establishing rebuttal of presumption."

13. In the present case, undisputedly, notice dated 19.10.2007 has been issued by the ITO, Ward 32(4), New Delhi who has no jurisdiction over the assessee for framing assessment u/s 143(3) of the Act and thus it is clear that the said notice was issued by ITO not having territorial jurisdiction over the assessee and thus the same is invalid. Our view also finds support from the order of the Tribunal in the case of Mukesh Kumar Vs. ITO [supra] wherein the following dicta laid down by the Hon'ble High Court of Allahabad in the case of CIT Vs. MT Builders Pvt Ltd [supra] wherein it was held thus:

"5. We perused the relevant material on record. In the present case the notice u/s 148 was issued on 2nd March 2009 by ITO Ward-26(4) New Delhi. After receipt of notice the appellant had responded through its authorized Representative and submitted the copy of the return filed under provisions of section 139. After noticing that the jurisdiction over the appellant is vested with ITO Ward-26(3), the file was transferred by ITO Ward-26(4) to ITO Ward - 26(3). The ITO Ward-26(3), New Delhi had proceeded with the framing assessment without issuing fresh notice u/s 148. It means that ITO Ward-26(4), New Delhi had no valid jurisdiction over the appellant, at the time of issuing notice u/s 148 of the Act. In such circumstances, it was held by the Hon'ble Allahabad High Court in the case of CIT Vs. M/s MT Builders Pvt. Ltd., (2012) 349 ITR 271 (All.) that the notice issued by an Officer who had no valid jurisdiction over the assessee is invalid. The notice under Section 148 of the Act issued by the Income Tax Officer, Ward-26(4) is non est in the eyes of law since he had no valid jurisdiction over the appellant either territorial as notified under Section 124 of the Act or by transferring the case under the provisions of Section 127 of the Act. Now, the question is whether the action of the Income Tax Officer, Ward-26(3) New Delhi was valid in law in concluding the assessment proceedings based on the notice issued under Section 148 of the Act by the Income Tax Officer, Ward-26(4) who had no valid jurisdiction to issue the notice. The issue of valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act; therefore, the assessment made pursuant to such notice is bad in law. In support of this proposition we rely upon the cases of Hon'ble Apex Court in the cases of Y. Narayana Chetty Vs. ITO, 35 ITR 388, 392 (SC); CIT Vs. Maharaja Pratap singh Bahadur, 41 ITR 421 (SC); and CIT Vs. Robert, 48 ITR 177 (SC). In the light of the above settled principle of law, we have no hesitation to quash the reassessment proceedings since there was no valid notice pursuant to which the reassessment proceeding was made in the present case. Accordingly, the appeal filed by the appellant is allowed.

14. In the light of the above dicta, in the present case, we are inclined to hold that first notice dated 19.10.2007 issued by the ITO, Ward 32(4) is non est in the eyes of law since he had no valid jurisdiction over the present assessee either territorial as per mandate of section 124 of the Act or by transferring the case under the provisions of section 127 of the Act. Secondly, even if the issue of non-jurisdiction AO is kept aside then from the copy of the record of the postal authorities [paper book page 5] it is clear that the notice was issued on incomplete address and thus preconditions, as set out by the third member Bench of ITAT, Jabalpur in the case of Vindhya Telelinks Ltd [supra] and ITAT, Delhi in the case of Shri Harvinder Singh Jaggi [supra] have not been fulfilled. In our opinion [which is rebuttable], valid service of notice can be made only if :

(1) if it is cumulatively shown, by the support of reliable evidence, by the Revenue that the notice u/s 143(2) of the Act was issued to the assessee through any of the modes as per mandate of section 282 of the Act;

(2) the complete name and address of the assessee as written in the return of income was correctly written over the notice and the envelope containing the notice and properly stamped was

handed over to the assessee providing reasonable time to the postal authorities for service upon the assessee prior to expiry of prescribed time limit;

(3) proof of handing over of said notice to the postal authorities should be established by placing on record the receipt and tracking number issued by the postal authorities at the time of handing over of envelope [containing notice]

(4) thereafter, neither the acknowledgment of receipt of notice by the assessee nor the notice is returned unserved then it shall be presumed that it was validly served upon the assessee.

15. It is relevant note that he said presumption can only be made if the Revenue successfully established that the aforementioned four conditions have been categorically and cumulatively fulfilled and complied. At the same time, we may also point out that the said presumption is not permissible which demolished the case of the Revenue based on presumption of valid service of notice at any of the four stages mentioned above. In our considered opinion, notice contains full address as per return of income is kept inside the envelope and the address of the assessee is mentioned on the envelope to indicate the addressee to the postal authorities and postal

officer to whom envelope is handed over, notes the address from the envelope and if such address is incomplete or incorrect then the pre condition No. (2), as noted above, cannot be held as fulfilled and the presumption of valid service of notice cannot be made. In the present case, at the cost of repetition, we clearly observe that the address noted by the postal authorities [paper book page 5] is an incomplete address if compared with the address given by the assessee in the return of income for A.Y 2006-07 [paper book page 1] and thus we have no hesitation to hold that the first notice issued by non jurisdictional AO, ITO, Ward 32(4) was not handed over to the postal authorities with complete and correct address and thus a rebuttable presumption, which can be rebutted by filing and showing substantive and reliable facts, evidence and circumstances. We may also point out that the same cannot be rebutted by self serving explanation and document or by merely uttering word of mouth in a casual manner that the assessee did not receive the notice and such lame excuses, self serving evidence and word of mouth are not sufficient for establishing rebuttal of said presumption.

16. In the light of above noted propositions, when we logically analyze and test the fact of the present case, on the touch stone of well accepted principles on service of notice, preconditions for having

presumption of valid service of notice and its rebuttal, then we observe that the notice issued by non jurisdictional ITO of Ward 32(4) dated 19.10.2007 was handed over to the postal authorities containing in an envelope and the address mentioned in the notice was as per return of income but the address noted by the postal authorities [paper book page 5] is incomplete and presumption of valid service of notice on the basis of copy of the postal record, as relied by the Revenue, available at assessee's paper book page 5 cannot be made and thus we are inclined to accept contention of the assessee towards attempt of rebuttal of presumption that the first notice dated 19.10.2007 was issued by the non jurisdictional AO and the notice was handed over to the postal authorities containing incomplete and incorrect address on the envelope as address mentioned by the AO in the copy of the notice dated 19.10.2007 [paper book page 6] is "Micro Spacematric Solution Private Limited, 32/205, First Floor, Vikram Vihar, Lajpat Nagar IV, New Delhi 110 024" whereas thë address noted by the postal clerk from the envelope was "Micro Spacematrix Solution, Sohel, 32/205, Vikram Vihar, which clearly shows that the address noted by the postal authorities from the envelope containing said notice was dated 19.10.2007 not only incomplete but it was incorrect. Hence, valid presumption of service of notice in favour of

Revenue and against the assessee cannot be made.

17. The next question for adjudication as raised by the ld. DR is that the assessee had participated in the assessment proceedings hence, u/s 292B of the Act he shall be precluded from taking any objection in any proceeding or enquiry under this Act that the notice was not served upon him. On these contentions, we are in agreement with the contentions of the ld. AR that the provisions of section 292BB of the Act was inserted by the Finance Act 2008 w.e.f 1.4.2008 i.e. from A.Y 2009-10 onwards and since the present case is pertaining to A.Y 2006-07, thus the provisions of section 292BB f the Act are not applicable to A.Y 2006-07. At the same time, from the proviso to section 292BB of the Act, we also note that nothing contained in this section shall apply where the assessee has raised such objection before completion of such assessment or reassessment. In the present case, as we have concluded above that the notice u/s 143(2) of the Act dated 19.10.2007 was issued by the AO not having valid jurisdiction over the assessee and the same was issued but handed over to the postal authorities with an incomplete and incorrect address on the envelope hence, presumption of valid service of notice cannot be taken in this case.

18. So far as the applicability of provisions of section 292BB of the Act is concerned, firstly it is not applicable to A.Y 2006-07 under consideration and secondly, the assessee raised objection regarding non service of notice dated 19.10.2007 on 5.11.2008 [paper book page 3] replying to the notice dated 7.10.2008 wherein he categorically objected to the service of second notice dated 7.10.2008 notice beyond prescribed time limit. So far as objection to first notice dated 19.10.2007 is concerned when this notice was not properly served upon the assessee then how the assessee can be expected to file objection against the notice which has not been served upon him. The assessee filed its objection on 5.11.2008 [paper book page 2] when he received notice dated 7.10.2008 alleging time barring which complete the requirement of proviso to section 292BB of the Act. Hence, on the basis of foregoing discussion and legal contention of the ld. DR are jettisoned and rejected.

19. At this juncture, it is relevant and necessary to adjudicate the contention of the ld. DR that at that point of time receipt and tracking number of speed post was not provided therefore the same could not be placed on record. As per the ratio of the order of ITAT Lucknow 'B' Bench in the case of ACIT Vs. Ravi Burman [supra] burden was upon the Revenue to prove that notice u/s 143(2) of the Act was served on

the assessee within the prescribed time and in the present case no proof of service, except copy of receipt by the postal authorities, has been filed. Since as we have held above that the address mentioned on the envelope containing said notice was incomplete and incorrect, hence presumption of valid service of notice in favour of the Revenue cannot be made as this presumption has been rebutted by the assessee establishing that the notice was handed over to the postal authorities with an incomplete and incorrect address. Therefore, contention of the ld. DR about h the assessee presumption of the valid service of first notice dated 19.10.2007 is not sustainable on this count also.

20. Furthermore, second notice issued by the ITO, Ward 6(4), having jurisdiction of assessment over the assessee was issued on 7.10.2008, which was admittedly and undisputedly properly served upon the assessee, has been issued after 31.10.2007 i.e. beyond the prescribed time limit u/ 143(2) of the Act and thus valid service of notice of section 143(2) of the Act cannot be held and hence impugned assessment order passed by the ITO, Ward 6(4) is void ab initio and thus we annul the same. We order accordingly. Consequently Ground No. 5, 6 and 7 of the assessee are allowed.

21. In the result, the appeal of the assessee is allowed.

The order is pronounced in the open court on 27.05.2016.

Sd/-	**Sd/-**
(O.P. KANT)	**(C.M. GARG)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 27th May, 2016

VL/
Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi