

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES (SMC), JAIPUR

श्री आर.पी.तोलानी, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI R.P. TOLANI, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 83/JP/2013  
निर्धारण वर्ष/Assessment Year : 2003-04

ITO Ward- 3 (2) Jaipur	बनाम Vs.	Ms. Shubhashri Panicker F-58-B, Kalidas Marg Banipark, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHFPP 7126 G		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

C.O. No. 13/JP/2013

(Arising out of आयकर अपील सं./ITA No. 83/JP/2013  
निर्धारण वर्ष/Assessment Year : 2003-04

Ms. Shubhashri Panicker F-58-B, Kalidas Marg Banipark, Jaipur	बनाम Vs.	ITO Ward- 3 (2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHFPP 7126 G		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

राजस्व की ओर से/ Revenue by :Smt. Neena Jeph, JCIT  
निर्धारिती की ओर से/ Assessee by : Shri N.K. Shrimal, CA

सुनवाई की तारीख/ Date of Hearing : 16/06/2015  
घोषणा की तारीख/ Date of Pronouncement : 26/06/2015

आदेश/ ORDER

PER R.P. TOLANI, JM

This is an appeal filed by the Revenue against the order of the Id.  
CIT(A), Alwar dated 02-11-2012 for the assessment year 2003-04. The

assessee has filed a C.O. Respective grounds are raised by both the parties as under:-

Revenue's ground in ITA No. 83/JP/2013

*“Whether on the facts and in the circumstances of the case and in law the ld. CIT(A) was justified in quashing the assessment order passed u/s 147/144 holding that the notice u/s 148 was not validly served upon the assessee.”*

Assessee's ground in C.O. No. 13/JP/2013

*“The ld. CIT(A) has erred in law and on fact by dismissing Ground No. 4 to 7 after quashing the assessment order in para 4.3 of order.”*

2.1 As is evident from the grounds that assessee's assessment in question was made u/s 147 read with Section 144 of the Act which was appealed by the assessee. Ld. CIT(A) quashed the re-assessment proceedings and consequently held that grounds on merits as infructuous. The Revenue is against the order of the ld. CIT(A) in quashing the assessment and the assessee is in the C.O. for the not deciding the issues on merits.

3.1 Brief facts of the case are that Investigation Wing of the Department, New Delhi got information that bogus entry operations were being carried out at large scale in Delhi and some of which were attributable at Jaipur. The operators and beneficiaries thereof were identified in which assessee's name was found to have received a sum of

Rs. 5,01,000/- via cheque no. 4490098 dated 13-12-2002 from one Shri Narendra through the bank account No. 24558 with SBBJ, New Rohtak Road, New Delhi. This sum was credited to the assessee's saving bank account no. 19517 with Bank of Baroda, Station Road, Jaipur on 18-12-2002. Based on this information from ADIT (Inv.), Jaipur, ld. AO recorded reasons in this behalf ; notice u/s 148 was issued on 22-03-2010 with prior approval and was sent to the assessee through speed post Receipt No. ER 017540747 IN. The assessee did not file any return of income in compliance thereto, thereafter notice u/s 142 of the Act was issued on 4-10-2010 for service on the same address through speed post fixing the date of hearing on 19-10-2010. In response thereto, the ld. AR of the assessee Shri N.K. Shrimal, CA attended the hearing and filed an application for adjournment. The case was adjourned to 29-10-2010. No compliance was made from the assessee. However, on 9-11-2010, the CA of the assessee attended and again filed adjournment application. The case was adjourned to 26-1-2010. No compliance was made on this date as well. The AO again issued query letter dated 26-11-2010 alongwith notice u/s 142(1) fixing the date of hearing on 2-12-2010. The ld. AR filed a letter stating that no notice u/s 148 was served on the assessee and he requested for inspection of the assessment record which was allowed

alongwith copy of reasons. On 2-12-2010, the ld. AR of the assessee filed letters challenging the validity of the assessment proceedings. The AO disposed off all the objections by holding that as per record notice through speed post was served on the assessee by following observations.

*“The notice u/s 148 was issued in the name of Ms. Shubashri Paniker, F-58, Kailash Marg, Bani Park, Jaipur on 22-03-2010 and sent for service through speed post on 22-03-2010. Inspection of the assessment record were made by your A/R on 30-11-2010 and this fact has also been verified by you A/R . The said notice was also not received back unserved. From the assessment record, it has also been noticed that a notice u/s 142(1) dated 4-10-2010, issued on the same address, fixing the hearing on 19-10-2010, which was sent for service through Speed Post, has duly been served on you and in response to which your A/R attended the hearing on 19-10-2010 and the case was adjourned to 29-10-2010. It shows that although in the notice the road name was mentioned as Kailash Marg, Bani Park, Jaipur instead of Kailidas Marg, Bani Park, Jaipur, the speed posts were served on the address as there is no road in the name of Kailash Marg at Bani Park, Jaipur.*

*In view of above facts your application is not acceptable, and hence the same is therefore, rejected.”*

Another letter was issued challenging that reasons record were also dealt with by the AO as under:-

*“3.4 I have gone through the submissions of the assessee. As narrated above, the proceedings u/s 147 read with Section 148 of the I.T. Act, 1961, were initiated after recording valid reasons. The notice u/s 148 of the Act sent through speed post has also been served on the assessee as*

*the same was received back. As such, I find no merit in the arguments of the assessee, it was held in the case of R.K. Upadhyaya V Shanabha P Patel (166 ITR 163 (SC); CIT vs. Sheo Kumar Debi (157 ITR 13 (Pat.) and Jai Hanuman Trading Co. (P) Ltd. vs. CIT 110 ITR 36 (Punj. & Hary.), that where the notice was issued within time but was served on the assessee after the expiry of the time limit, it could not be held to be invalid. The Hon'ble Supreme Court in the case of CIT vs. Major Tikka Kushwant Singh (212 ITR 650) held that issuance of notice within period of limitation gives jurisdiction to Assessing Officer to proceed to make reassessment. The Hon'ble Delhi High Court in the case of CIT vs. Yamu Industries Ltd. 167 Taxman 67 held that the notice sent by registered post to the correct address of the assessee had not been received back 'unserved' within a period of thirty days of its issuance, there was presumption under law that the said notice had been duly served upon the assessee within the period of limitation. In view of above facts, assessee's contention in this regard is not acceptable and therefore, the same is rejected.'"*

Since the assessee neither filed the return of income nor complied with the statutory obligations and did not cooperate in the assessment proceedings and further went on raising the technical objections, the assessment was complete ex-parte u/s 14 by making following additions.

“7. With the above remarks, income is computed as under:-

1. Income estimated for the year as above	Rs. 1,20,000/-
2. Income as discussed above in terms of Section 69 of the I.T. Act	<u>Rs. 10,00,000/-</u>
	<u>Rs. 11,20,000/-</u>

3.2 Aggrieved, the assessee preferred first appeal challenging the validity of the assessment proceedings as well merits of the additions.

The ld. CIT(A) considering the contentions of the assessee about non-service of notice of u/s 148 quashed the assessment by following observations.

*“I find that in the case of the appellant, the notice u/s 148 dated 22-03-2010 has not been sent t on the other hand, the correct address of the assessee i.e. Ms. Shubashri Paniker, F58(B), Kaildas Marg, Bani Park, Jaipur and therefore, no valid presumption can arise under the law that the said notice had been duly served upon the assessee, since it had not been received back unserved. The proper service of notice u/s 148 is essential for the AO to assume jurisdiction u/s 147/148 of the Act and to make a valid assessment order. In the case of CIT vs. Yamu Industries Ltd., the Hon'ble Court has upheld the service of notice u/s 143(2) within the period of limitation since the notice had been ‘‘correctly addressed’’ to the assessee and sent by registered post in consonance with the requirement of Section 282(1) of the Act with order V Rule 19A of the CPC.*

*In view of above facts and circumstances of the case, I am of the considered opinion that there is no valid service of notice u/s 148 of the Act and the AO has incorrectly assumed the jurisdiction u/s 147/148 of the Act. Accordingly, the assessment order u/s 147/144 of the Act is found to be invalid and is ordered to be quashed. The Ground No. one, two and three of the appellant are allowed.’’*

3.3 Aggrieved both the parties are in second appeal. Ld. Counsel for the assessee contends that :-

A. Ld. AO has wrongly presumed that the notice sent by speed post on the address Ms. Subhashri Panicker; E-58, .....Kailash Marg, Bani Park, Jaipur vide ER 017540747 dated 22-03-2010 was issued and served upon the assessee. The correct address of the assessee is as under:-

*Ms. Subhashri Panicker  
F-58, B Kalidas Marg, Bani Park, Jaipur*

*B. The alleged notice sent by ld. Assessing Officer was not a valid notice since the address on the receipt of speed post was not of assessee for the following reasons.*

*(i) The correct prefix to Plot No. 58 is ‘‘F’’ whereas in notice prefix was used as ‘‘E’’.*

*(ii) The suffix to Plot No. 58 is ‘‘B’’ which is not written in the notice.*

*(iii) The correct name of Road is Kaildas Marg instead of Kailash Marg as written on the notice.*

*The PAN allotment letter clearly shows the correct address in the records of department and available to ld. Assessing Officer. The address written on the speed post was completely deformed and mismash.*

*The ld. Assessing Officer while dealing with non-issue of service of notice has stated as under:-*

*.....In the case cited by ld AO above, it is clearly stated that notice be sent by Registered Post to the correct address. In the case of assessee notice sent by ld. Assessing Officer was not sent by Registered Post and was also sent erroneously on the address which is not of the and different at three stags as stated above. The notice was sent on incorrect address and Assessing Officer cannot mechanically presume that it was duly served.*

*C. Ld. CIT(A) has correctly held that the ld Assessing Officer has failed to issue and serve a valid notice to assessee within the limitation period, which is pre-requisite for making assessment u/s 147/144 of the I.T. Act and proceeding and assessment made thereafter on the basis of such invalid notice is*

*void abinitio. We respectfully submit that decision of CIT (A) should be upheld and appeal of Revenue should be dismissed. ‘*

3.4 Apropos C.O., it is submitted that the Id. CIT(A) ought to have decided the other issues about the correctness of reasons and its nexus with assessee's case. If the reasons are based on wrong assessment then they cannot make a correct foundation for belief. The reason to believe is merely ‘some information’ from investigation wing and there is no independent application of mind by Assessing Officer before re-opening the case. The Assessing Officer has not applied his independent mind which is evident from following.

*(i) The reason contents the word ‘Some inquiries’ which implies even the fully inquiry was not completed and the Assessing Officer has accepted the fact as gospel truth without any further enquiry.*

*(ii) The reason to believe is based on ‘Bogus Entry Operator’. The full name, address, PAN and nature of transaction were not given in the information.*

*(iii) The statement recorded by investigation cell is not formed part of reason.*

*(iv) The nature of bogus entry is not explained fully whether it is loan, share transaction, share capital, purchase/ sales of assets, advance for any expenses etc.*

*(v) No enquiry is made by investigation cell with the assessee thereby barring assessee right in hearing. The*

*investigation cell has referred the name without any examination of assessee and without giving an opportunity to be heard.*

*It is submitted that the notice u/s 148/147 of the I.T. Act was without any reason to believe but on the basis of suspicion and some information provided by Investigation Wing and notice based upon such suspicion should be quashed.’’*

*“Without prejudice to grounds it is contended that the addition of Rs. 5,00,000/- is unjustified as:-*

*(a) The case was opened for Rs. 501000 dated 18-12-2002 and not for amount of Rs. 50,00,000/-.*

*(b) In statement providing reasons for reopening the nature of entry was not provided to the assessee.’’*

Reliance is placed by the Id. AR of the assessee as under:-

- (1) Ashok B Bafna vs. DCIT (2012) 27 Taxmann.Com 126 (Mum)
- (2) ITO vs. Om Exim (P) Ltd. 40 Taxmann.com 133 (Delhi)
- (3) CIT vs. Dr. Ajay Prakash 42 Taxmann. Com 387 (All.)

3.5 The Id. DR on the other hand contends that notices issued u/s 148 and 142(1) were served on the assessee. In response thereto, the Id. AR of the assessee duly appeared from time to time and sought adjournments without raising any grievance about non-service of 148 notice. It is only at the fag end of the assessment by way of an afterthought that story about non-services of the notices u/s 148 was concocted to defeat the statutory process of the assessment. The notice u/s 148 was issued in the name of Ms. Shubashri Paniker, F-58, Kailash Marg, Bani Park,

Jaipur on 22-03-2010 and sent for service through speed post on 22-03-2010. This speed post was not received back from the postal authorities suggesting any non service. Again the notice u/s 142(1) dated 4-10-2010 fixing hearing on 19-10-2010 was sent on the same address. In response to which, Shri N.K. Shrimal, CA/A/R attended this office on 19-10-2010 which clearly demonstrates that notices were being duly served on the assessee and communicated to her CA. From these facts, it is evident that the notice u/s 148 sent through speed post stand duly been served on the assessee in the eyes of law. It has been held by Hon'ble Delhi High Court in the case of CIT vs. Yamu Industries Ltd. (supra), if it is assumed that first notice was not served on the assessee then in second notice if the assessee appeared and did not raise any objection after 30 days of issuance of notice, then and it is a valid presumption under law that no notice is served. This fact is further corroborated by repeated appearance of AR of the assessee. Apropos reasons recorded for reopening, the impugned bogus entry was found in the books of the assessee; it has been held by the Hon'ble Apex Court in the case of Phool Chand Bajrang Lal And Another vs. ITO , 203 ITR 456 that it is not for the Court to judge the sufficiency of reasons recorded for forming the belief which is the initial stage of income escaping assessment. The AO had valid

information in his possession which is placed on the record. It is pleaded that the Id. CIT(A) erred in holding that there is no service of notice and assumption of jurisdiction is invalid.

3.6 Ld. DR relied on the order of the Tribunal in the case of ITO vs. Shri Sarabh (Saurabh) Charan (ITA No.1119/JP/2011 dated 5-12-2014)

holding as under:-

*“7. We have heard the rival contentions of both the parties and perused the material available on the record. By affixture notice was served on the given address of the assessee on 26/09/2008. Even the assessee himself admitted that he had received notice dated 30/09/2008 on 09/10/2008, which is within 12 months from the date of return filed i.e. 31/10/2007. The Hon’ble Punjab & Haryana High Court in the case of Amarjit Singh Tut (supra) has held that statute of limitation is a procedural statute and is applicable to pending proceedings. Objection to the territorial jurisdiction has to be raised at the earliest and it otherwise deemed to have been waived. The Hon’ble Court further held that for A.Y. 2007-08 even notice issued and served within one year from the end of the date of return is valid notice U/s 143(2)(ii) of the Act. In another case, the Hon’ble Punjab & Haryana High Court in the case of CIT Vs. Jasbir Singh NRI through Shri Jarnail Singh, POA in ITA No. 253 of 2012 (O&M) order dated 21/2/2012 has held that notice issue on the last known address is valid service. It is further held that 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. The assessee received compensation on compulsory acquisition of land, therefore, 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 lapse, the assessee should not be a gainer and that too by default to escape his liability. Squally, order of the Tribunal also lacks merit. The case law cited by the learned DR i.e. V.R.A. Cotton Mills P. Ltd. Vs. Union of India (supra) is squarely application on the assessee’s case wherein it has been held that prescribed time limit for notice, the expression “serve” and “issue” are interchangeable, as has been noticed in Section 27 of the General Clauses Act, 1897 and also in a judgment of the Hon’ble Supreme Court in the case of Banarsi Devi Vs. ITO (1964)*

*53 ITR 100 (SC), therefore, the moment, notice is signed and put in the course of transmission by the department, the notice is due to be served. It has been held that notice, which was served by the affixture on the last day of limitation is valid. The appellant had not filed any FIR against the claim that somebody had filed his return as claimed before the learned CIT(A), therefore, we set aside the order of the learned CIT(A) and directed to frame the order as per law after providing reasonable opportunity of being heard to both the parties.’’*

The Hon'ble Delhi High Court decision in the case of M/s. Yamu Industries Ltd. (supra) is as under:-

*‘‘15. So, the provisions of Section 282 of the Act with regard to the service of notice have been duly complied with by the Revenue. Since the notice u/s 143(2) of the Act sent by the registered post had not been received back [unserved] within thirty days of its issuance, so there would be presumption under the law that notice has been duly served upon the assessee.*

*16. In the instant case, since the notice has not been received back unserved within the period of thirty days of its issuance, under these circumstances, it has to be held that the notice has been duly served upon the assessee.*

*17. Accordingly, we hold that notice u/s 143(2) of the Act has been duly served upon the assessee within the period of limitation and this finding of the Tribunal that no notice u/s 143(2) of the Act has been served within the prescribed period is liable to be set aside.*

*18. As such, the present appeal filed by the Revenue is accepted and the impugned order passed by the Tribunal is set aside and consequently, the order quashing the assessment for the period in question is also set aside.*

It is pleaded that Bani Park is a posh area of Jaipur with resident who are well known. A minor typographical error in the road or mentioning of E/F cannot make a significant difference, statutory notices got served on the assessee which is evident from the repeated appearances. The fact of the matter is that all the notices were served on the assessee and the ld. AR of the assessee attended the hearing time and again. Consequently the assessee's assertions are patently wrong, self contradictory and contrary to overall facts on the record. Ld. CIT(A) ignoring these vital facts was not correct in quashing the assessment.

3.7 I have heard the rival contentions and perused the materials available on record, as the facts emerge the first notice was transmitted by ld. AO through speed post which is not been disputed by the assessee after inspection. It is thus clear that the notice was under transmission by handing over to the postal authority who acted as an agent of the recipient. The speed post notice has been returned mentioning the address as wrong or undelivered which is a standard practice of the postal Department. Assessee's AR in the initial hearings never indicated that 148 notice was not properly served. The lame objection is taken at the fag end of assessment, which clearly smack of a design. Thus in the entirety of facts and circumstances of the case and case laws of CIT vs. Yamu

Industries Ltd. (supra) and ITAT judgement in the case of ITO vs. Shri Sarabh (Saurabh) Charan (supra), it is held that the ld. CIT(A) glossed over the relevant facts and committed an error in quashing the re-assessment proceedings. Consequently the order of ld. CIT(A) quashing the reassessment is quashed. Revenue appeal is allowed.

3.8 Apropos assessee's ground no 4 in CO, it is held by Hon'ble Supreme Court in the case of Phool Chand Bajrang Lal (supra), that sufficiency of reasons cannot be gone into by the court at the time of recording of reasons as it is the beginning of the process of reassessment. Assessee attitude was totally non-cooperative in compliance and the alleged discrepancy about information cannot be held to be fatal to the recording of the reasons. Consequently ground no. 4 of assessee's appeal is dismissed.

3.9 Apropos remaining grounds of the C.O. of the assessee, since the order of the ld. CIT(A) quashing the reassessment is reversed by this order, it will be desirable that on merits the additions are adjudicated upon which is not done by the ld. CIT(A). In view thereof, the merit of the case as raised in grounds of appeal pertaining to Ground No. 5 to 7 are restored back to the file of the ld. CIT(A) to decide the same afresh on

merits after providing reasonable opportunity of being heard to the assessee.

4.0 In the result, the appeal of the Revenue is allowed and C.O. of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 26/06/2015.

Sd/-  
(आर.पी.तोलानी)  
(R.P.Tolani)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 26/06/ 2015

\*Mishra

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The ITO, Ward- 3 (2), Jaipur
2. प्रत्यर्थी / The Respondent- Ms. Shubhashri Panicker, Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.83/JP/2013)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar