

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.4810/Del/2019
Assessment Year: 2010-11

Smt. Shashi Kanta, H. No. 124, Ward No. 1, Panipat, Haryana	Vs.	Income Tax Officer, Ward-04, Panipat
PAN :AALP00503D		
(Appellant)		(Respondent)

Appellant by	Sh. Satyam Aneja, Advocate
Respondent by	Sh. Om Parkash, Sr. DR

Date of hearing	31.08.2022
Date of pronouncement	08.09.2022

ORDER

This is an appeal by the assessee against order dated 04.12.2018 of learned Commissioner of Income Tax (Appeals), Karnal, for the assessment year 2010-11.

2. At the outset, I must observe, there is a delay of 93 days in filling the appeal. The assessee has filed an application seeking condonation of delay supported by an affidavit. It is submitted, before me that due to some personal difficulty faced by assessee's counsel, the appeal could not be filed in time.

3. Considering the submissions of the parties, I am satisfied that the delay in filing the appeal was due to a reasonable cause. Accordingly, I condone the delay and admit the appeal for adjudication.

4. The primary grievance of the assessee is against the initiation of proceeding under section 147 of the Act and the validity of the assessment order passed under the said provision.

5. Briefly the facts are, the assessee is a resident individual. Upon receiving information that the assessee along with another person has sold an immovable property for a consideration of Rs.35,07,000/-, which was not offered to tax, the Assessing Officer reopened the assessment under section 147 of the Act by issuing a notice under section 148 of the Act. It is observed, ultimately, the Assessing Officer completed the assessment ex-parte under section 147/144 of the Act alleging that the assessee did not appear in the proceeding in spite of service of notice issued under section 148 as well as section 142(1) of the act. While completing the assessment, the Assessing Officer added back an amount of Rs.9,98,277/- as short term capital gain. Against the assessment order so passed, the assessee preferred an appeal before learned Commissioner (Appeals), inter alia, challenging the validity of the assessment

order passed. Learned Commissioner (Appeals), however, did not find merit in the grounds raised. Accordingly, dismissed the appeal.

6. Before me, learned counsel appearing for the assessee made a preliminary submission that notice issued under section 148 of the Act was never served on the assessee. To substantiate his claim, learned counsel for the assessee submitted that the notice under section 148 was issued in an address which does not relate to the assessee. He submitted, in absence of valid service of notice under section 148 of the act, the assessment order passed under section 144 read with section 147 is invalid. In support of such contention, he relied upon the following decisions:

1. *Rajkumar Jindal & Another vs. ITO , 2019 SCC OnLine ITAT 15698*
2. *Veena Devi Karnani v. ITO (2019) 410 ITR 23 (Delhi) (HC)*

7. Learned Department Representative, drawing my attention to the report dated 31.12.2021 received from the Assessing Officer, submitted that notice issued under section 148 of the Act was validly served on the assessee.

8. I have considered rival submissions and perused the materials on record. From the report of the Assessing Officer as well as other materials on record, it is observed that the notice under section 148 of the Act was issued to the assessee by

mentioning the address as “7-B, Prahlad Colony, Panipat’. The Assessing Officer has observed that the purported notice was not only issued through registered post but also served by way of affixture at the given address. However, on a perusal of the assessment order, it is very much clear that the Assessing Officer himself has mentioned the address of the assessee as “Smt. Shashi Kanta, W/o- Sh. Gulshan Kumar, H. No. 124, Ward No. 1, Panipat”.

9. Thus, the address of the assessee as mentioned in the assessment order does not match with the address in which the notice under section 148 of the Act was issued. It is further relevant to observe, much prior to initiation of proceeding under section 147 of the Act, the assessee had filed return of income for some other assessment years mentioning the address as has been mentioned in the assessment order. Even, copy of the Aadhar Card and Passport placed in the paper-book mentions the address as H. No. 124, Ward No. 1, Panipat. Therefore, there cannot be any manner of doubt that the correct address of the assessee is, as mentioned in the body of the assessment order and not on which the notice under section 148 of the Act was issued. Therefore, it is evident, the notice issued by the Assessing Officer was not validly served on the assessee.

10. It is trite law, valid service of notice under section 148 of the Act is *sine qua non* for proceeding under section 147 of the Act. In absence of valid service of notice under section 148 of the Act, the assessment proceeding under section 147 of the Act has to be declared as invalid. That being the case, I hold that the impugned assessment order passed under section 147/144 of the Act is invalid in absence of a valid service of notice issued under section 148 of the Act on the assessee. Accordingly, I quash the assessment order. As a natural corollary, the impugned order of learned Commissioner (Appeals) is set aside.

11. In the result, the appeal is allowed.

Order pronounced in the open court on 8th September, 2022

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 8th September, 2022.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi