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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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\+ **ITA 665/2015**

PR. CIT-1 ..... Appellant

Through: Mr. N. P. Sahni, Senior Standing counsel with Mr. Nitin Gulati, Advocate.

versus

ATLANTA CAPITAL PVT. LTD. ..... Respondent

AND

3.

\+ **ITA 666/2015**

PR. CIT-1 ..... Appellant

Through: Mr. N. P. Sahni, Senior Standing counsel with Mr. Nitin Gulati, Advocate.

versus

ATLANTA CAPITAL PVT. LTD. ..... Respondent

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 21.09.2015

CM No. 17271/2015 (for exemption)

1. Exemption allowed subject to all just exceptions.

2. The application is disposed of.

CM No. 17272/2015 (for condonation of delay in re-filing ITA No.

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665/2015
CM No. 17275/2015 (for condonation of delay in re-filing ITA No. 666/2015

3. For the reasons stated in the applications, the delays in re-filing the respective appeals are condoned.

4. The applications are disposed of.

ITA Nos. 665/2015 & 666/2015

5. The short question that arises for determination in the present appeals by the Revenue under Section 260A (1) of the Income Tax Act, 1961 ('Act') against the impugned order dated 29th August 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3496//Del/2010 for the Assessment Year ('AY') 2001-02 is whether the notice to the Assessee under Section 148 of the Act was duly issued and served in accordance with law?

6. At the outset it may be noticed that recently this Court has by a decision dated 15th September 2015 in ITA No. 72 of 2014 (***Commissioner of Income Tax v. Chetan Gupta***) discussed the entire law in detail and summarised the legal position as under:

> (i) Under Section 148 of the Act, the issue of notice to the Assessee and service of such notice upon the Assessee are jurisdictional requirements that must be mandatorily complied with. They are not mere procedural requirements.

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(ii) For the AO to exercise jurisdiction to reopen an assessment, notice under Section 148 (1) has to be mandatorily issued to the Assessee. Further the AO cannot complete the reassessment without service of the notice so issued upon the Assessee in accordance with Section 282 (1) of the Act read with Order V Rule 12 CPC and Order III Rule 6 CPC.

(iii) Although there is a change in the scheme of Sections 147, 148 and 149 of the Act from the corresponding Section 34 of the 1922 Act, the legal requirement of service of notice upon the Assessee in terms of Section 148 read with Section 282 (1) and Section 153 (2) of the Act is a jurisdictional pre-condition to finalizing the reassessment.

(iv) The onus is on the Revenue to show that proper service of notice has been effected under Section 148 of the Act on the Assessee or an agent duly empowered by him to accept notices on his behalf. In the present case, the Revenue has failed to discharge that onus.

(v) The mere fact that an Assessee or some other person on his behalf not duly authorised participated in the reassessment proceedings after coming to know of it will not constitute a waiver of the requirement of effecting proper service of notice on the Assessee under Section 148 of the Act.

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(vi) Reassessment proceedings finalised by an AO without effecting proper service of notice on the Assessee under Section 148 (1) of the Act are invalid and liable to be quashed.

(vii) Section 292 BB is prospective. In any event the Assessee in the present case, having raised an objection regarding the failure by the Revenue to effect service of notice upon him, the main part of Section 292 BB is not attracted.

7. On the facts of the present case, it is seen that notice dated 27th March 2008 under Section 148 of the Act was issued to the Assessee by the Assessing Officer ('AO') at the address at B-231, Okhla Industrial Area, Phase-I, New Delhi. Admittedly, the Assessee had shifted from that address with effect from 1st February 2005 to a new address at B-115, Sarvodaya Enclave, New Delhi. For AY 2005-06 and the subsequent AYs, the Assessee disclosed his address as B-115, Sarvodaya Enclave, New Delhi. Even the AO had sent letters to the Assessee at the same address on 8th August 2007. The intimation under Section 143(1) of the Act dated 25th January 2008 for AY 2006-07 was also sent by the AO to the Assessee at the same changed address i.e. B-115, Sarvodaya Enclave, New Delhi. There is nothing to show that the notice under Section 148 of the Act was in fact issued by the AO showing the aforementioned changed address.

8. It is the contention of Mr. N.P. Sahni, learned Senior Standing counsel for the Revenue, that the notice satisfied the requirement as to limitation under Section 149 (b) of the Act. However, as noted by the ITAT, the notice itself

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was not issued at the correct address. The fact that the said notice, sent by speed post, was not returned unserved, would be to no avail since the address given in the notice was not the last known address of the Assessee.

9. Mr. Sahni then submitted that it was incumbent on the Assessee to have got his changed address entered in the PAN Data Base failing which the AO would only go by the address given in the record of the relevant AY which in the case is AY 2001-02.

10. The Court is unable to agree with this submission. No provision in the Act has been shown to the Court which obliges the Assessee to ensure that his changed address is entered in the PAN Data Base failing which he is precluded from insisting on the notice under Section 148 being issued to him at the known address and being served upon him. In the present case, on facts, it is not in dispute that the AO was aware of the change of address of the Assessee and yet the notice under Section 148 of the Act was issued at the older address.

11. Mr. Sahni submitted that the order of the CIT (A) notes the fact that a photocopy of the notice was given to the Assessee during the re-assessment proceedings and that by itself should constitute sufficient service of notice on the Assessee. In light of the law explained by the Supreme Court in ***R.K. Upadhyaya v. Shanbhai P. Patel (1987) 3 SCC 96*** which has in turn been followed by this Court in ***Chetan Gupta*** (*supra*), the requirement of both the issuance and the service of such upon the Assessee for the purposes of Section 147 and 148 of the Act are mandatory 'jurisdictional requirements'.

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The mere fact that an Assessee participated in the re-assessment proceedings despite not having been issued or served with the notice under Section 148 of the Act in accordance with law will not constitute a waiver of the said jurisdictional requirement.

12. On facts, therefore, the Court finds no legal error committed by the ITAT in holding that there was no proper service of notice on the Assessee under Section 148 of the Act.

13. Consequently, the Court finds that no substantial question of law arises for determination by the Court.

14. The appeals are dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

SEPTEMBER 21, 2015/dn