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आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री संदीप गोसाईं, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No. 168/JP/2020
निर्धारण वर्ष/Assessment Year :2010-11

Girirajkripa Developers Pvt. Ltd. A 2PSM Complex Power House Road, Banipark, Jaipur.	बनाम Vs.	I.T.O., Ward-3(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCG 8973 H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Shri S.L. Poddar (Adv.)
राजस्व की ओर से/ Revenue by : Shri B.K. Gupta (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 27/08/2020
उदघोषणा की तारीख/ Date of Pronouncement :11/09/2020

आदेश/ ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of the ld. CIT(A)-1, Jaipur dated 31/01/2020 for the A.Y. 2010-11. Following grounds have been taken by the assessee:

"*1. Under the facts and circumstances of the case, the ld. CIT(A) erred in confirming the action of the ld. AO in passing the order U/s 148/143(3) which is void an-initio deserves to be quashed.*

2. Under the facts and circumstances of the case, the ld. CIT(A) erred in treating the expenditure of the assessee on vacating the premises as sale and thereby applying the provisions of Section 50C of the Income Tax Act, 1961.

3. Under the facts and circumstances of the case, the ld. CIT(A) erred in treating the transaction of the assessee for vacating the premises under the consent term in suit filed before Rent Tribunal agreed for vacating the premises against the zero consideration.

4. Under the facts and circumstances of the case, the ld. CIT(A) erred in sustaining the addition of Rs. 1,13,23,461/- out of total addition of Rs. 2,76,51,300/- by applying the provision of Section 50C of the income Tax Act, 1961.

5. The ld ITO erred in levying interest u/s 234A and 234B of the Income Tax Act, 1961.

6. The ld. ITO erred in initiating penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961.

7. The assessee craves your indulgence to add, amend or alter all or any grounds of appeal before or at the time of hearing."

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. The brief facts of the case are that the assessee is a private limited company. filed its return of income originally on 14.10.2010 declaring a loss of Rs. 3,16,326/-. Subsequently in protest against allegedly notice issued u/s 148 of the Income Tax Act, 1961 (in short, the Act) on 30.03.2017, assessee furnished return on 30.10.2017 disclosing the same loss of Rs. 3,15,326/- as disclosed in the return filed originally on 14.10.2010. The A.O. completed the assessment u/s 148/143(3) of the Act determining total income at Rs. 2,76,51,300/-

thereby making the addition of Rs. 2,76,51,300/- on account of short term capital gains.

4. Being aggrieved by the order of the A.O., the assessee preferred appeal before the ld. CIT(A), who after considering both the parties has upheld reopening of assessment U/s 147, on merits the ld. CIT(A) sustained the addition of Rs. 1,13,23,461/- by holding that the transaction is a transfer within the meaning of Section 2(47) r.w.s. 45 of the Act and therefore, the provisions of Section 50C of the Act are applicable.

5. Against the order of the ld. CIT(A), the assessee is in further appeal before the ITAT.

6. Ground No. 1 of the appeal raised by the assessee relates to confirming the action of the A.O. by the ld. CIT(A) in passing the order U/s 148/143(3) of the Act.

7. At the outset, the ld AR appearing on behalf of the assessee had raised the arguments that no notice u/s 148 of the Act was ever served upon the assessee and reiterated the same argument as were raised before the ld. CIT(A) and submitted that this ground raised by the assessee is a jurisdictional ground and goes to the root of the case. It was submitted that no notice U/s 148 of the Act was issued or served by the revenue upon the assessee. In this respect, the ld AR has submitted

written submissions filed, the relevant part of the same are reproduced below:

"In this case while filing return of income on 30.10.2017 in response to notices received by the assessee u/s 142(1) a note was given that notice u/s 148 was not served upon the assessee. However, since the assessee has received notice u/s 143(2) and 142(1) for assessment proceedings hence return was filed in protest. A copy of the return filed along with computation of income mentioning the above note is available on paper book page number 1 to 4. Just after filing return of income the assessee further submitted a letter dated 01.11.2017 i.e. just next day of filing of return of income stating the fact that notice u/s 148 was not served upon the assessee. The assessee participated in the assessment proceedings stating again and again that the assessment proceedings were without jurisdiction as no notice u/s 148 was served upon the assessee. A copy of this letter is available on paper book page no. 5 & 6. In view of this the completion of assessment u/s 148 is ab-initio void and deserves to be annulled. The same is assailed as under: -

2. No service of notice u/s 148 –

During the course of assessment proceedings it was vehemently argued by the assessee that the service of notice should be proved and disclosed to the assessee before proceeding in the matter of assessment. However the Learned Assessing Officer did not bother. He even while responding to the objections of the assessee vide letter dated 07.11.2017 scanned below. The Learned Assessing Officer has not mentioned the date on which notice u/s 148 was served either by post or by notice server as claimed in the letter. This proves that in the records of the revenue there is no evidence of service of notice u/s 148. Otherwise the Learned

Assessing Officer would have disclosed and shown to the assessee but this was not done. Therefore it is prayed that assessment so framed without jurisdiction deserves to be annulled;

सत्यमेव जयते	भारत सरकार/**Government of India** कार्यालय/ **Office of the** आयकर अधिकारी, वार्ड 3(2), जयपुर **Income Tax Officer Ward 3(2), Jaipur** कमरा न. 226, द्वितीय तल, केन्द्रीय राजस्व भवन, **Room No. 226, 2nd Floor, Central Revenue Building,** स्टेच्यू सर्किल, जयपुर . 302005 **Statue Circle, Jaipur - 302 005** email: jaipur.ito3.2@incometax.gov.in	Telephone/दूरभाष: 0141 2385632
No. ITO/W-3(2)/JPR/2017-18/		Dated: 07.11.2017

To
M/s Giriraj Kripa Developers Pvt. Ltd.,
Flat No.201, Spphire Green Appartments,
Plot No.SB-169, Bapu Nagar,
Jaipur.

27.5.13001

Sir/Madam,

Sub:- Notice under sec 148 of the I.T. Act - Objections to initiation of proceedings – A.Y. 2010-11 - Reply regarding -

Please refer to letter No. Nil dated Nil filed on 07.11.2017 thereby raising objections against reopening of assessment under sec. 147 in your case for the A.Y. 2010-11 wherein the following objections have been raised:-

i. Notice under sec. 148 dated 30.03.2017 has never been served or received till 31.03.2017.
ii. Reassessment proceedings cannot be initiated without making enquiry only on the basis of information received.
iii. Incorrect facts in the reasons recorded.
iv. Suspicion however strong cannot take the place of evidence

2. The contention of the above referred letters has been duly considered. It is pertinent to mention here that the time limit for Notice under sec. 148 has been prescribed in section 149 of the Income-tax Act, 1961. Relevant part of the above section is read as under:-

*[(1) No notice under section 148 shall be **issued** for the relevant assessment year –*

(b) if four years, but more than six years, have elapsed from the end of relevant assessment year unless the income chargable to tax which has escaped assessment to or is likely to amount to one lakh rupees or more for that year].

3. Thus, it is evident that a Notice under sec. 148 **is to be issued** within six years from the end of relevant assessment year. In the instant case this limit expires on 31.03.2017. Notice under sec. 148 in the instant case was issued on

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30.03.2017 under endorsement No. 1292. The above Notice was handed over to the official of Postal Department for serving upon the assessee. The Postal authorities has duly acknowledged the receipt of above Notice and accordingly issued a receipt on 31.03.2017 No. 'ER328684609IN'. From the above fact it is evident that the Notice under sec. 148 has duly been issued within the stipulated time limits. The above Notice stands duly served by the Postal Authorities at the given address. Further, the said Notice has also been served at the given address through the Notice Server of Income-tax Department. Thus, a Notice under sec. 148 issued within limitation period and served subsequent to expiry date of limitation tentamounts to be a valid Notice. This has been held in the following judgments:-

New Bank of India Limited Vs ITO (Del) 136 ITR 679
R.K. Upadhyaya Vs. Shanabhai P. Patel (SC) 166 ITR 163
ITO Vs Lal Chand Agarwal (ITAT, Agra-TM) 134 ITD 91

4. Inview of above facts and circumstance no force has been found in your objection related to issue and service of Notice under sec. 148 for the A.Y. 2010-11 in your case.

5. Further, it is pertinent to mention here that while initiating proceedings u/s 147 there must be existence of belief of the AO that income had escaped assessment **[ITO vs Lakhmani Mewal Das (SC) 103 ITR 437; Phool Chand Bajrang Lal and Another vs ITO & another (SC) 203 ITR 456 and Raymond Woollen Mills vs ITO & another (SC) 236 ITR 34].** At the time of re-opening, Assessing officer is not required to establish escapement of income **[Srikrishan (P) Ltd. vs CIT (SC) 221 ITR 538].** The expression "has reason to believe" is wider than "is satisfied" **[Kalyanji Mavji & Co. vs CIT(SC) 102 ITR 287].** The only condition to be satisfied for re-opening is that the taxable income has escaped assessment **[Kone Elevator India P.Ltd. vs ITO (Mad) 340 ITR 454].** In the instant case there is sufficient material available on records which indicates that income of the assessee has escaped assessment. Therefore, proceedings under sec. 147 has been rightly initiated and accordingly the Notice under sec. 148 has rightly been issued in the case under reference.

6. Inview of above, it is requested to please attend the proceedings and comply with the requirements of Order sheet entry dated 01.11.2017. For this purpose the case has been fixed for hearing on **10th November, 2017 2.30 PM**. Notice under sec. 143(2) is enclosed.

Yours sincerely,

Encl: as above.

(Jai Narayan),
Income-tax Officer,
Ward 3(2), Jaipur.

In the letter scanned above, although the assessee has challenged the service of notice u/s 148 despite this Learned Assessing Officer has not mentioned the date of service of notice u/s 148. This clearly establishes that notice u/s 148 was not served upon the assessee.

It is submitted that it is settled position of law that when service is effected by notice server of the department or by post in such case it is for the department to prove that notice has been served in accordance with provisions of order V of the Code of Civil Procedure, particularly rules 16 to 20 thereof. Reliance is placed on the following decisions:

(i) CIT vs. Mal Chand Surana 28 ITR 684 (Cal)

(ii) Saha Vs. CIT 27 ITR 231 (Cal)

In the case of the company the notice has to be served either upon to the assessee i.e. the Directors or upon the Principal Officer or any person duly authorized by the company. In this case none of these conditions are fulfilled. Notice has not been served on directors or on the Principal Officer of the company. The Learned Assessing Officer could not assume jurisdiction without service of notice u/s 148. The assessment proceedings are therefore ab-initio void.

It is settled law that it is the duty of the revenue to establish that the service of an order or a notice was made on the assessee himself or on somebody duly authorized by him in that behalf. When the assessee pleads that he has not been properly served with any notice, it is for the Department to place the relevant material to substantiate the plea that the assessee was served. In the present case, no material is on record to show that the person to whom the notice is alleged to have been served. It was fundamental requirement to get the notice served on the assessee before proceeding to complete the reassessment and as it is lacking, this jurisdictional defect cannot be cured and thus

assessment is liable to be quashed on this point. Notice under section 148 is a jurisdictional notice. Therefore, no service of notice under section 148 cannot be said to be a procedural defect and it cannot be cured by the participation of the assessee in the re-assessment proceedings**. Since the assessee raised this issue and questioned the service of notice during the course of the assessment proceedings hence the section 292BB is of no help. This provision is applicable only in the facts and circumstances when the assessee has not raised the issue of service and has not questioned the same during the course of assessment proceedings.**

The appellant company relies upon the following decisions for the proposition of law that proper service of notice u/s 148 is mandatory for assuming valid jurisdiction to re-assess the escaped income. He has relied on the following decisions:

(i) CIT vs. Vardhman Estate P. Ltd. 287 ITR 368 (Del)
(ii) CIT vs. Bhan Textiles P. Ltd. 287 ITR 370 (Del)
(iii) CIT vs. Lunar Diamonds Ltd. 281 ITR 1 (Del)
(iv) Venkat Naicken Trust v. ITRO 242 ITR 141 (Mad)
(v) Sudev Industries Ltd. v. ITO 98 TTJ 97 (Del)
(vi) Hind Book House v. ITO 92 lTD 415 (Del)
(vii) Dulli Chand Laxmi Narain v. AC'IT 89 lTD 426 (Del)
(viii) Dina Nath v. CIT 204 ITR 667 (J&K)
(ix) Jayanthi Talkies Distributors v. CIT 120 ITR 576 (Mad)"

Therefore the order passed without serving notice to the assessee deserve to be quashed.

8. On the other hand, the ld DR had relied on the orders of the authorities below. CIT Dr relied on provisions of Section 292BB and contended that since assessee had participated in the reassessment proceedings and had also filed its return of income, therefore, it shall be

deemed that the notice has been duly served in accordance with the provisions of the Act and as such the assessee is precluded from taking any objection that notice was not served. Ld. DR in this regard relied upon the decision of Hon'ble Supreme Court in the case of R.K. Upadhaya Vs. Shanabai P Patel (1987) 33 taxmann 229 (SC).

9. We have heard the rival contentions of both the parties and have perused the material placed on record, judgments cited by the parties as well as orders passed by the revenue authorities. The basic dispute before us raised by the assessee is that no notice U/s 148 of the Act was served upon the assessee. It was categorically submitted by the assessee that, although, the assessee has filed return of income on 30/10/2017, however, a specific note was given in the return that notice U/s 148 of the Act was not served upon the assessee. It was submitted that since the assessee has received notice u/s 143(2) and 142(1) of the Act for assessment proceedings, therefore, return was filed in protest. The assessee has placed on record copy of return alongwith computation of income which is at page No. 1 to 4 of the paper book wherein specific note has been written by the assessee that no notice U/s 148 of the Act was served upon the assessee. It was further submitted that a separate letter dated 01/11/2017 on the next day of filing of return of income was also filed by the assessee to the revenue

thereby again stating the fact that notice U/s 148 of the Act was not served upon the assessee. In this regard, copy of letter is available at page 5 & 6 of the paper book. Ld AR has also drawn our attention to the letter dated 07/11/2017 issued by the revenue and the copy of which is scanned below.

सत्यमेव जयते	भारत सरकार/Government of India कार्यालय/ Office of the आयकर अधिकारी, वार्ड 3(2), जयपुर **Income Tax Officer Ward 3(2), Jaipur** कमरा न. 226, द्वितीय तल, केन्द्रीय राजस्व भवन, **Room No. 226, 2nd Floor, Central Revenue Building,** स्टेच्यू सर्किल, जयपुर . 302005 **Statue Circle, Jaipur - 302 005** email: jaipur.ito3.2@incometax.gov.in	Telephone/दूरभाष: 0141 2385632
No. ITO/W-3(2)/JPR/2017-18/		Dated: 07.11.2017

To
M/s Giriraj Kripa Developers Pvt. Ltd.,
Flat No.201, Spphire Green Appartments,
Plot No.SB-169, Bapu Nagar,
Jaipur.

27/5/13500

Sir/Madam,

Sub:- Notice under sec 148 of the I.T. Act - Objections to initiation of proceedings – A.Y. 2010-11 - Reply regarding -

Please refer to letter No. Nil dated Nil filed on 07.11.2017 thereby raising objections against reopening of assessment under sec. 147 in your case for the A.Y. 2010-11 wherein the following objections have been raised:-

i. Notice under sec. 148 dated 30.03.2017 has never been served or received till 31.03.2017.
ii. Reassessment proceedings cannot be initiated without making enquiry only on the basis of information received.
iii. Incorrect facts in the reasons recorded.
iv. Suspicion however strong cannot take the place of evidence

2. The contention of the above referred letters has been duly considered. It is pertinent to mention here that the time limit for Notice under sec. 148 has been prescribed in section 149 of the Income-tax Act, 1961. Relevant part of the above section is read as under:-

*[(1) No notice under section 148 shall be **issued** for the relevant assessment year –*

(b) if four years, but more than six years, have elapsed from the end of relevant assessment year unless the income chargable to tax which has escaped assessment to or is likely to amount to one lakh rupees or more for that year].

3. Thus, it is evident that a Notice under sec. 148 **is to be issued** within six years from the end of relevant assessment year. In the instant case this limit expires on 31.03.2017. Notice under sec. 148 in the instant case was issued on

.....2

: 2 :

30.03.2017 under endorsement No. 1292. The above Notice was handed over to the official of Postal Department for serving upon the assessee. The Postal authorities has duly acknowledged the receipt of above Notice and accordingly issued a receipt on 31.03.2017 No. 'ER328684609IN'. From the above fact it is evident that the Notice under sec. 148 has duly been issued within the stipulated time limits. The above Notice stands duly served by the Postal Authorities at the given address. Further, the said Notice has also been served at the given address through the Notice Server of Income-tax Department. Thus, a Notice under sec. 148 issued within limitation period and served subsequent to expiry date of limitation tentamounts to be a valid Notice. This has been held in the following judgments:-

New Bank of India Limited Vs ITO (Del) 136 ITR 679
R.K. Upadhyaya Vs. Shanabhai P. Patel (SC) 166 ITR 163
ITO Vs Lal Chand Agarwal (ITAT, Agra-TM) 134 ITD 91

4. Inview of above facts and circumstance no force has been found in your objection related to issue and service of Notice under sec. 148 for the A.Y. 2010-11 in your case.

5. Further, it is pertinent to mention here that while initiating proceedings u/s 147 there must be existence of belief of the AO that income had escaped assessment **[ITO vs Lakhmani Mewal Das (SC) 103 ITR 437; Phool Chand Bajrang Lal and Another vs ITO & another (SC) 203 ITR 456 and Raymond Woollen Mills vs ITO & another (SC) 236 ITR 34].** At the time of re-opening, Assessing officer is not required to establish escapement of income **[Srikrishan (P) Ltd. vs CIT (SC) 221 ITR 538].** The expression "has reason to believe" is wider than "is satisfied" **[Kalyanji Mavji & Co. vs CIT(SC) 102 ITR 287].** The only condition to be satisfied for re-opening is that the taxable income has escaped assessment **[Kone Elevator India P.Ltd. vs ITO (Mad) 340 ITR 454].** In the instant case there is sufficient material available on records which indicates that income of the assessee has escaped assessment. Therefore, proceedings under sec. 147 has been rightly initiated and accordingly the Notice under sec. 148 has rightly been issued in the case under reference.

6. Inview of above, it is requested to please attend the proceedings and comply with the requirements of Order sheet entry dated 01.11.2017. For this purpose the case has been fixed for hearing on **10th November, 2017 2.30 PM**. Notice under sec. 143(2) is enclosed.

Yours sincerely,

Encl: as above.

(Jai Narayan),
Income-tax Officer,
Ward 3(2), Jaipur.

10. From perusal of the said reply, it is amply clear that A.O. has nowhere mentioned in the reply that on which date notice U/s 148 of the Act was served upon the assessee and there is no evidence on record with regard to service of notice U/s 148 of the Act upon the assessee. The assessee has relied upon the decision in the case of CIT Vs Mal Chand Surana 28 ITR 684 (Cal) and in the case of Saha Vs CIT 27 ITR 231 (Cal) wherein it has been mentioned that when service is effected by notice server to the department or by post, in such case, it is for the department to prove that notice has been served in accordance with provisions of order V of Code of Civil Procedure, particularly Rules 16 to 20 thereof.

10.1 Since the assessee has raised this ground and questioned the service of notice during the course of assessment proceedings time and again, therefore, the provisions of Section 292BB of the Act as relied upon by the ld DR is of no help to the revenue as this provision is applicable only in the facts and circumstances, when the assessee has not raised the issue of service and has not questioned the same during the course of assessment proceedings. In this respect, we draw strength from the following decisions:

(i) CIT vs. Vardhman Estate P. Ltd. 287 ITR 368 (Del)
(ii) CIT vs. Bhan Textiles P. Ltd. 287 ITR 370 (Del)
(iii) CIT vs. Lunar Diamonds Ltd. 281 ITR 1 (Del)

(iv) Venkat Naicken Trust v. ITRO 242 ITR 141 (Mad)
(v) Sudev Industries Ltd. v. ITO 98 TTJ 97 (Del)
(vi) Hind Book House v. ITO 92 lTD 415 (Del)
(vii) Dulli Chand Laxmi Narain v. ACIT 89 lTD 426 (Del)
(viii) Dina Nath v. CIT 204 ITR 667 (J&K)
(ix) Jayanthi Talkies Distributors v. CIT 120 ITR 576 (Mad)"

11. The only argument raised by the department is by relying on the decision of the Hon'ble Supreme Court in the case of R.K. Upadhyaya Vs Shanabhai P Patel (1987) 33 Taxman 229 (SC). It was submitted that service of notice is not a condition precedent to conferment of jurisdiction in ITO. However, the said decision of the Hon'ble Supreme Court has already been distinguished by the Hon'ble Delhi High Court in the case of CIT Vs Chetan Gupta in ITA No. 72 of 2014 decided dated 15/09/2015 wherein it was held as under:

3. The Assessee, showing his address as "C/o Jagat Theatre, Chandigarh", filed a return of income for AY 2001-2002 with the Income Tax Range-2, Chandigarh on 11th October, 2001 disclosing an income of Rs. 6,47,425. The return was processed under Section 143(1) of the Act and an acknowledgement issued on 5th January, 2002.

4. Information was received from the Additional Director of Income Tax Investigation (ADIT) Unit (VI), New Delhi by letter dated 27th February, 2008, stating that the Assessee had been arrested on 17th May, 2007 in FIR No. 5 dated 23rd March, 2007, Police Station Vigilance Bureau, Ludhiana pertaining to the Ludhiana City Centre Scam and a pen drive had been recovered from him. The print outs from the pen drive received by ADIT from the Punjab Vigilance Bureau were forwarded to the Assessing Officer (AO) in Chandigarh. A perusal of the print outs revealed that there were various entries in different names pertaining to Financial Year (FY) 2000-2001. The information when tabulated by the AO showed that there were credits of Rs. 40,49,77,905 on which interest of Rs. 7,35,49,141 had been paid. For the FY in question a sum of Rs. 84,86,363 had been paid as

interest. The Assessee had failed to enclose a balance sheet with his return of income filed. Apart from salary income, the Assessee had disclosed income from house property on account of his half share in a property in Delhi and some interest income. The AO therefore concluded that the Assessee had not fully and truly disclosed all material facts for the AY in question. The AO noted that in a statement dated 24th September 2007, recorded by the ADIT (Inv.), Ludhiana, the Assessee denied knowledge of the names appearing in the pen drive although he failed to deny that the pen drive was recovered from his possession. The AO drew a presumption that the information in the pen drive found in his possession was true and that the primary onus to establish the identity, genuineness and creditworthiness of the creditors whose names appeared therein was on the Assessee. The AO accordingly concluded that he had reason to believe that the income for the AY in question had been under-assessed to the extent of the sums mentioned hereinbefore and had therefore escaped assessment within the meaning of Section 147(b) of the Act.

The re-assessment proceedings

5. On 28th March 2008, the Assistant Commissioner of Income Tax (ACIT) Circle 3, Chandigarh issued a notice under Section 148 of the Act. The notice was addressed to the Assessee but the address indicated therein was "C/o Kiran Cinema, Sector-22, Chandigarh." It appears that the said notice was served upon one Mr. Ved Prakash, an Accountant at Kiran Cinema on that very date.

6. Subsequently the jurisdiction of the Assessee was transferred to the ACIT, Central Circle-5, New Delhi. On 28th November, 2008, another notice under Section 148 of the Act was issued to the Assessee by the ACIT, New Delhi and this time there were two addresses shown for him. The first was "C/o Kiran Cinema, Sector-22, Chandigarh" and the second "C/o Vipin Aggarwal & Associates, E-4, Defence Colony, New Delhi."

7. In response to the above notice, on 12th December, 2008, Vipin Aggarwal & Associates addressed a letter to the ACIT *inter alia* stating as under:

"In this connection, it is to submit that the assessee has not received any notice u/s 148 dated 28.03.2008 requiring the assessee firm to file a return in the prescribed form, as mentioned in the present notice.

In view of that you are requested to provide us the above notice u/s 148 along with basis and reason of opening the above mentioned case u/s 148 of the Income Tax Act to enable us to get comply with the same.

In continuation to above proceedings and our earlier submission, without prejudice to the legal rights of the assessee earlier original return filed by the assessee, may be treated as a return in these provisions u/s 148 of the Income Tax Act, under protest and we object the present proceedings."

8. On that very date, i.e. 12th December 2008, the ACIT, Central Circle 5, New Delhi again wrote to the Assessee with the two addresses mentioned hereinbefore acknowledging that the letter dated 12th December, 2008 of Vipin Aggarwal & Associates had been received in *dak* and further stating as under:

". . . . . I have been informed by the ACIT, Circle 3(1), Chandigarh that notice has been validly served on Shri Ved Prakash, accountant of Kiran Cinema (who also receives other notices of the concerned group concerns)."

9. The ACIT stated that the assessment was going to be barred by limitation on 31st December, 2008 and, therefore, the Assessee should show cause why the sums mentioned hereinbefore "should not be added in the income as they were not declared in the return of AY 2001-02."

10. In response to the above letter, Vipin Aggarwal & Associates wrote to the ACIT on 19th December, 2008, as under:

"Dear Sir,

This is with reference to your letter dated 12.12.08 and our earlier reply dated 12.12.08. It is again submitted that notice u/s 148 was not received by the assessee.

However, without prejudice to the above submissions, it is respectfully submitted that the copy of information mentioned in the reason recorded as received from ADIT (Investigation Unit), VI(1) may please be supplied to us so that reply may be filed.

It is further submitted that pen drive was never recovered from the possession or control of the assessee and therefore there is no question of any explanation from the assessee. Assessee never did any money lending as alleged in the reason recorded. Therefore, the reopening of the present assessment is with great respect unjustified. The assessee has already declined to have any knowledge as well as recovery from him, the said pen drive before the ADIT (Inv.), Ludhiana and Delhi.

It is further requested that copy of the pen drive and its printouts as referred in the reasons recorded may please be supplied to us.

Further, in the reason recorded for the reopening of the case, it has been mentioned that the concerned officer has tabulated the information and some amount of credit totalling to Rs. 40,49,77,905/- along with interest has been shown. It is requested that the basis of the said figures may be given to us, so that reply may be filed as required in your show cause notice dated 12.12.08 regarding adding of said amount to the income of the assessee for the Asstt. Year 2001-02."

11. The ACIT computed the assessment on 29th December, 2008 under Section 143(3)/148 of the Act and made an addition of Rs. 30,50,48,745 to the income of the Assessee for AY 2001-02.

Order of the CIT (A)

12. In the appeal filed before the Commissioner of Income Tax (Appeals) [CIT(A)], the Assessee contended *inter alia* that the AO erred in law in framing the impugned assessment order "without assuming jurisdiction as per law and without serving the mandatory notices under Sections 143 & 148 of the Act."

13. In the order dated 26th March, 2012 dismissing the Assessee's appeal, the CIT(A) noted that a letter had been faxed by the ACIT, New Delhi to ACIT, Circle-3, Chandigarh regarding issue of notice under Section 148 of the Act. In response, the ACIT Chandigarh by a fax letter *inter alia* stated that notice in the name of the Assessee had been served "at the only available address of the Assessee, i.e. C/o Kiran Cinema, Sector-22, Chandigarh." It was further stated that Mr. Ved Prakash "who has been working as regular Accountant for the last five-six years received the notice on behalf of the Assessee as the Assessee himself is rarely available at the given address." It was further mentioned that service of all notices pertaining to "the Assessee Group" was effected at the above address at Kiran Cinema and that different employees of Kiran Cinema had received the said notices. Further, in the case of Ms. Vandana Gupta, the Assessee's daughter, service of notices had been effected at Kiran Cinema. Even in the other group case of M/s. Jagtumal Kundan Lal, C/o Jagat Theatre, service of notice had been effected at Kiran Cinema. It was accordingly asserted by the Revenue that proper compliance had been made.

14. The Assessee, *inter alia*, contended before the CIT(A) that service of notice had not been effected properly in accordance with the legal requirements specified under Section 282(1) of the Act; that Section 292 BB did not have retrospective operation and further that the Assessee had in any event raised an objection in that regard prior to the completion of re-assessment by the AO.

15. The CIT(A) rejected the above contentions by observing that the Assessee was silent on the issue as to why notices in the case of family members and other group cases were received at the address of Kiran Cinema. The CIT (A) concluded that it appeared that the Assessee and his group "for their own convenience prefer to receive notice at this place instead of so called address of care of Jagat Theatre." The purpose of the notice was to make the Assessee aware of the proceedings and that purpose had been fulfilled. Further, Section 292BB was a procedural provision which had come into effect from 1st April, 2008 whereas the notice was issued thereafter and assessment had been made on 29th December, 2008. Accordingly, the above ground was rejected. Thereafter the CIT (A) proceeded to discuss the merits of the additions made and upheld it.

The impugned order of the ITAT

16. Aggrieved by the above order the Assessee filed an appeal being ITA No. 1891/Del/2012 before the ITAT urging more or less the same grounds of challenge to the order of re-assessment.

17. The ITAT, by the impugned order, reversed the order of the CIT (A) and came to the conclusion that with the Assessee's contention that Ved Prakash is neither his employee nor his authorized representative remaining uncontroverted, and with that AO failing to take note of the Assessee's objections about non-service of notice under Sections 148 and 143 (2) of the Act, it could not be said to be proper service upon the Assessee.

18. The ITAT followed the decisions of this Court in *CIT* v. *Hotline International (P.) Ltd.* [2008] 296 ITR 333/[2007] 161 Taxman 104 (Delhi) and of the Supreme Court in *Asstt. CIT* v. *Hotel Blue Moon* [2010] 321 ITR 362/188 Taxman 113 (SC) and held that on account of the absence of a valid service of notice under Section 148 of the Act on the Assessee, the re-assessment proceedings for AY 2001-02 were bad in law.

Submissions of counsel

19. This Court has heard the submissions of Mr. Raghvendra Singh, learned Junior counsel for the Revenue and Mr. Ajay Vohra, learned Senior counsel for the Respondent-Assessee.

20. The submission of Mr. Singh was to the effect that there is distinction to be drawn between issuance of notice under Section 148 of the Act and service of such notice upon the Assessee. Relying on the decision of the Supreme Court in *R.K. Upadhyaya* v. *Shanbhai P. Patel* [1987] 3 SCC 96, Mr. Singh submitted that service of notice under Section 148 of the Act was "not a condition precedent to conferment of jurisdiction in the ITO to deal with the matter". Referring to Section 153 (2) of the Act Mr. Singh submitted that there was no time limit for completion of the re-assessment. This was different from the requirement under Section 34 of the Income Tax Act, 1922 ('1922 Act') In other words as long as notice had been issued under Section 148 of the Act, the AO would have jurisdiction to proceed with the reassessment. The only restriction was that he could not complete the re-assessment without notice being served upon the Assessee.

21. Mr. Singh submitted that in the present case the Assessee did not deny that Mr. Ved Prakash was employed by him as an Accountant. Referring to the decision in *Harshad J. Shah* v. *LIC of India* AIR 1997 SC 2459 Mr. Singh submitted that in such circumstances the doctrine of 'apparent authority' would apply such that although the principal may not have given that person such authority, his conduct was such that it could be inferred. According to Mr. Singh, in terms of Section 282 (1) of the Act read with Order 9 Rule 12 CPC, invoking the doctrine of implied authority, service of notice upon Mr. Ved Prakash should be construed as proper service of notice upon the Assessee. Further the Assessee had nowhere denied that in other proceedings Mr. Ved Prakash had in fact represented the Assessee. Once the Revenue had taken such a stand, the burden according to Mr. Singh shifted to the Assessee to show that Ved Prakash was not his agent.

22. Mr. Singh also referred to Section 292 BB of the Act. Reliance was also placed on the decision in *CIT* v. *Shital Prasad Kharag Prasad* [2006] 280 ITR 541/[2005] 147 Taxman 441 (All.); *Hotline International (P.) Ltd.* (*supra*); *Nath Suresh Chand Ram Naresh* v. *CIT* [2006] 280 ITR 396/[2005] 145 Taxman 186 (All.); *P.N. Sasikumar* v. *CIT* [1988] 170 ITR 80/[1987] 35 Taxman 131 (Ker.); *Venad Properties (P.) Ltd.* v. *CIT* [2012] 340 ITR

463/212 Taxman 20/[2011] 16 taxmann.com 62 (Delhi) and *Mayawati* v. *CIT* [2010] 321 ITR 349 (Delhi).

23. In reply, Mr. Ajay Vohra submitted that notice to an Assessee under Section 148 and 143 (2) of the Act was different from a notice under Section 142 (1) for instance. Service of notice on the Assessee strictly in terms of Section 148 read with Section 282 (1) of the Act is a jurisdictional requirement. Section 153 (2) of the Act made it clear that without such service of notice the AO could not proceed to make the re-assessment. He submitted that the onus was on the Revenue to show that service of notice had been effected on the Assessee or his authorised representative. The failure to serve such notice would lead to the inevitable result of invalidating the re-assessment order. Finally, he pointed out that Section 292 BB of the Act, introduced with effect from 1st April 2008 was not retrospective. In any event, in terms of the proviso thereto, the Assessee had, prior to the completion of the re-assessment, specifically raised an objection to the effect that service of notice under Section 148 of the Act had not been effected upon him. Mr. Vohra referred to a number of decisions in support of the above submissions, which will be discussed hereafter.

Service of notice a jurisdictional requirement

24. The Court first would like to deal with the question whether notice under Section 148 of the Act is a jurisdictional requirement. The relevant portion of Section 148 (1) reads as under:

"148. *Issue of notice where income has escaped assessment*.— (1) Before making the assessment, reassessment or recomputation under Section 147, the Income-tax Officer shall serve on the Assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of Section 139; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section."

25. The Supreme Court in *R.K. Upadhyaya* (*supra*), explained that there was a distinct shift in the scheme of the provisions of the 1961 Act in comparison with the corresponding provision i.e. Section 34 under the 1922 Act under which the mandatory requirement was that both the issuance and service of notice had to be completed within the prescribed period. Consequently, the service of notice within the limitation period

was the foundation of jurisdiction under the 1922 Act. In *Y. Narayana Chetty* v. *ITO* [1959] 35 ITR 388 the Supreme Court observed in the context of Section 34 of the 1922 Act,:

"The notice prescribed by section 34 of the Income tax Act for the purpose of initiating reassessment proceedings is not a mere procedural requirement; the service of the prescribed notice on the assessee is a condition precedent to the validity of any reassessment made under section 34. If no notice is issued or if the notice issued is shown to be invalid then the proceedings taken by the Income-tax Officer without a notice or in pursuance of an invalid notice would be illegal and void."

26. This was also the basis for the decision in *Banarasi Debi* v. *ITO* [1964] 53 ITR 100 (SC). However, under the 1961 Act the procedural requirement has been spread over three sections, being Sections 147, 148 and 149. The period of limitation within which notice under Section 148 has to be issued is specified in Section 149. Section 153 (2) of the Act stipulates that no order of re-assessment can be passed beyond the period of one year from the expiry of the financial year in which service of the notice was effected. Section 148 (1), however, is clear that no reassessment can take place without service of notice being effected on the Assessee or his authorised representative.

27. In *R.K. Upadhyaya* (*supra*) the Supreme Court explained that "the mandate of Section 148 (1) is that reassessment shall not be made until there has been service." However, the said decision does state that jurisdiction becomes vested in the AO to proceed with the assessment once notice is issued within a period of limitation. It also emphasized that no reassessment shall be made "until there has been service." The legal position therefore, even under the 1961 Act, is that service of notice under Section 148 is a jurisdictional requirement for completing the re-assessment. This has been emphasized in several other decisions of the High Courts as well.

28. In *C.N. Nataraj* v. *Fifth ITO* [1965] 56 ITR 250 (Mys), the High Court of Mysore was dealing with the case where the notice under Section 148 of the Act was issued in the names of the Assessee who were minors and not in the names of their guardians. The notices were served on a clerk of the father of the Assessee who was neither an agent of the Assessee nor authorized to accept notices on their behalf. The Court, relying on the decision in *N. Narayana Chetty* (*supra*) observed:

"There is no doubt that a notice prescribed under section 148 of the Act for initiating reassessment proceedings is not a mere procedural requirement ; the service of the prescribed notice on the assessee is a condition precedent to the validity of any reassessment made under section 147. If no notice is issued or if the notice issued is shown to be invalid, then the proceedings taken by the Income tax Officer without a notice or in pursuance of an invalid notice would be illegal and void."

29. In *Hotline International (P) Ltd.* (*supra*) this Court held that affixation of notice on an address at which the security guard of the Assessee-company refuses to receive such notice cannot be construed to be a proper service of notice under Section 148 of the Act. The security guard was not an agent of the Assessee and therefore, the reassessment proceedings were held to be bad in law.

30. In *Dina Nath* v. *CIT* [1994] 72 Taxman 174 (J. & K.) the notice under Section 143 (2) of the 1961 Act was served upon one S, who was neither a member of the family of the Assessee nor his duly authorized agent. However, S had been accepting the notice on behalf of the Assessee and prosecuting the cases on his behalf earlier before the income tax authorities. The High Court held:

"the object of issuance the notice or summons is to intimate the concerned person to appear and answer the queries or the question sought to be clarified by a Court or the authorities. As serious consequences are likely to follow, a notice or summons must necessarily be issued and served in the form and in the manner prescribed by law."

31. The High Court in *Dina Nath* (*supra*), referred to Order V Rule 12 CPC as well as Order III Rule 6 CPC. It thereafter concluded that notice must be served personally upon the individual or upon his agent duly authorized in terms of Order III Rule 6 CPC. The contention of the Assessee was upheld and the reassessment proceeding was quashed.

32. In *Jayanthi Talkies Distributors* v. *CIT* [1979] 120 ITR 576 (Mad.) the notice was served by the notice-server of the Department on the Manager of the Assessee-firm. The Manager wrote to the ITO seeking time. Since no return was filed by the Assessee within the time granted, the ITO completed the reassessment under Section 144 of the 1961 Act. On appeal the High Court found that none of the partners of the Assessee-firm had been personally served with the notice. Service was effected

only on the Manager of the firm who had no specific or written authority to receive such notice. It was held:

"when the statute provides that a notice should be served in a particular mode, it was not possible to hold that there had been a proper service of notice merely from the fact that the person to whom the notice had been addressed had received the notice through some other source or that he had become aware of the contents of the notice. There had not been a due service of notice as contemplated by the provisions of the Code of Civil Procedure dealing with service of notice or summons. Therefore, the service of the notice on the Manager who had no written authority to receive the same could not be held to be a proper service on the Assessee."

33. In *Sri Nath Suresh Chand Ram Naresh* (*supra*) it was reiterated that service of valid notice under Section 148 was "the foundation for the initiation of reassessment proceedings and a condition precedent for the validity of the notice." It was held that the Tribunal was not right in holding that the notices under Section 148 addressed as 'SCR' and the *karta* 'S' were valid notices for reassessing the income of the HUF 'MM' or 'MS' or its successors.

Onus on Revenue to prove service of notice

34. There is sufficient judicial authority for the proposition that the burden of showing that service of noticed has been effected on the Assessee or his duly authorized representative is on the Revenue. These include *Fatechand Agarwal* v. *CWT* [1974] 97 ITR 701 (Ori.) and *Venkat Naicken Trust* v. *ITO* [1999] 107 Taxman 391/[2000] 242 ITR 141 (Mad). In *CIT* v. *Thayaballi Mulla Jeevaji Kapasi* [1967] 66 ITR 147 (SC), the Respondent to whom the notice was directed was not in town. The only information which the process server had was that the Respondent was either in Bombay or Ceylon. Thereafter, the process server affixed the notice on the business premises of the Respondent. The Supreme Court affirmed the essential principle that "if no notice was served within the period, the Income-tax Officer was incompetent to commence proceedings for reassessment under Section 34 of 1922 Act." It was further held that "service of notice under Section 34 (1) (a) within the period of limitation being a condition precedent to the existence of jurisdiction, if the Income-tax Officer was unable to prove that the notice was duly served upon the Respondent within the prescribed period, any return filed by the

Respondent after the expiry of the period of eight years will not invest the Income-tax Officer with authority to reassess the income of the Respondent pursuant to such return." On the facts of that case it was held that the Revenue had sufficiently discharged the onus by producing the affidavit of the process server.

35. Under Section 282 (1) of the Act, service of notice may be made by delivering or transmitting a copy thereof to the person to whom the notice is addressed by more than on mode. One of the modes is "in such manner as provided under the Code of Civil Procedure, 1908 ('CPC')". For the purpose of service of summons under Order V Rule 12 CPC, service can be taken to complete, if it is effected, on person to whom his address or to another person who is empowered to receive such notice on his behalf. Besides the appointment of such agent by the Assessee has to be in writing in order to meet the requirement of Order III Rules 2 and 6 CPC. Therefore, in the instant case, the Revenue had to show that the person on whom the notice was served i.e., Mr. Ved Prakash was in fact empowered by the Assessee to receive notices on his behalf. Apart from invoking the doctrine of 'apparent authority', the Revenue has been unable to show that, in fact, Ved Prakash was empowered to receive such notice on behalf of the Assessee.

36. The reliance by the Assessee on the decision in *Harshad J. Shah* (*supra*) appears to be misplaced. The facts there were that the relationship of principal and agent flowed from the contract. The agent was employed as such by the LIC and the letter of appointment contained an expressed prohibition on him collecting premium on behalf of the LIC. Further there were regulations that prohibiting the agents from collecting premium on behalf of the LIC. The Court explained the doctrine of apparent authority and observed: "the authority of the agent is apparent where it results from a manifestation made by the principal to third parties." On the facts of the case, the said doctrine was held not to bind the LIC against third parties who may have been unaware of the lack of authority of the agent to whom they handed over the premium cheques. In the present case, however, the Revenue has not been able to show that the Assessee held out Mr. Ved Prakash to be his employee or agent.

37. No attempt appears to have been made by the Revenue to serve the Assessee at the address provided by him i.e. "c/o Jagat Theatre, Sector 17, Chandigarh". All the notices were addressed to him at the address "C/o

Kiran Cinema, Chandigarh" which was in Sector-22. Therefore, this is not a case where an attempt was made by the Revenue to serve the Assessee at his known address, and upon not finding him there the Revenue learnt of the address where he would be found. Merely because other notices sent to the 'Assessee group' were received by the employees of Kiran Cinema it does not automatically lead to the inference that the Assessee's place of business was also Kiran Cinema. In any event, there could not be an inference that Mr. Ved Prakash was duly empowered by the Assessee to receive notices on his behalf. In the very first notice dated 28th March 2008 the endorsement made by Mr. Ved Prakash shows him describing himself as "Accountant, Kiran Cinema, Sector-22, Chandigarh" and nothing more.

38. It was not as if the Revenue was not made aware of the lapse. Vipin Aggarwal & Associates, the Chartered Accountants (CAs) of the Assessee, by their letter dated 12th December 2008 informed the ACIT that the Assessee had not till then received the notice dated 28th March 2008 under Section 148 of the Act. They made a specific request to the ACIT that a copy of notice under Section 148 "along with basis and reason of opening the above mentioned case under Section 148" be provided to them to enable them to "comply with the same." However, the ACIT in his reply of the same date continued to show the addresses of the Assessee as "c/o Kiran Cinema, Sector-22, Chandigarh" and "c/o M/s. Vipin Aggarwal & Associates CA" and insisted that notice had been "validly served on Shri Ved Prakash, accountant of Kiran Cinema (who also receives other notices of the concerned group concerns)." The CAs for a second time on 19th December 2008 pointed out that that "notice u/s 148 was not received by the assessee" and again asked for a copy thereof along with the reasons for reopening the assessment. However, no attempt was made by the ACIT to ascertain the correct address of the Assessee and serve a copy of the notice afresh on him.

Participation by Assessee in proceedings not a waiver

39. The next issue to be considered is whether the failure by the Assessee to specifically protest that Mr. Ved Prakash was not his Accountant or agent or that he was not empowered to accept notices on his behalf should be taken to be a waiver by the Assessee of the requirement of proper service of notice in terms of Section 148 of the Act. The settled legal position is that merely because an Assessee may have participated in the

proceedings, the requirement of service of proper notice upon the person in accordance with the legal requirement under Section 148 of the Act is not dispensed with.

40. In *B. Johar Forest Works* v. *CIT* [1977] 107 ITR 409 (J&K) the notice issued by the ITO to the Assessee under Section 22 (2) of the 1922 Act. The notice was served on an employee of the Assessee who was not authorized to accept such notice. Subsequently, the General Manager of the Assessee applied for extension of time for filing the return, which was allowed by the ITO. However, the return was not filed within the extended time and an *ex parte* order was passed. Before the High Court it was contended that the employee on whom the service of the notice was found to have been made was not duly authorized to accept such notice and that the mere fact that the General Manager of the firm applied for time, would not render the service of notice on the employee a valid and a legal service. It is contended that the Assessee had not denied service of notice on such employee. The High Court however negatived the plea of the Revenue and held that in the absence of finding by the Tribunal that the employee of the Assessee was authorized to accept such service on behalf of the Assessee, notice could not be said to have been duly served upon the Assessee. It was held that "acquisition of knowledge in regard to the issuance of a notice under Section 22 (2) of 1922 Act could not be considered to be equivalent to, or a substitute for, the service of the notice on the Assessee." It was further observed that "knowing about the issuance of the notice otherwise than by its service on the person concerned is one thing and the service of the notice on the person is another."

41. In the context of sales tax the Full Bench of the Allahabad High Court in *Laxmi Narain Anand Prakash* v. *Commissioner of Sales Tax* AIR 1980 All 198 it was held that the notice of initiation proceeding under Section 21 of U.P. Sales Tax Act, 1947 was a condition precedent and not only a procedural requirement. The mere fact that the Assessee had obtained knowledge of the proceeding and participated could not validate the proceeding being initiated without jurisdiction. It is subsequently held that "it is firmly established that where a Court or Tribunal has no jurisdiction, no amount of consent, acquiescence or waiver can create it."

Decisions referred to by the Revenue

42. The cases referred to by Mr. Singh do not appear to be relevant to the case on hand. The general observations in *Venad Properties (P.) Ltd.* (*supra*) to the effect that the failure to comply with a procedural requirement should not defeat substantive justice may not be apposite in the present context where the failure to serve notice under Section 148 is a jurisdictional and not merely a procedural requirement.

43. Also, the observations in *Mayawati* (*supra*) to the effect that the requirement of service of notice under Section 143 (2) of the Act cannot be considered as mandatory can no longer be considered to be good law in light of the subsequent decision of the Supreme Court in *Hotel Blue Moon* (*supra*) where it was held that an "omission on the part of the assessing authority to issue notice under Section 143 (2) cannot be a procedural irregularity and the same is not curable and, therefore, the requirement of notice under Section 143 (2) cannot be dispensed with."

44. The submission that under Section 153 (2) of the Act, there was an open ended time limit for completion of the reassessment till such time proper service of the notice under Section 148 of the Act was not effected on the Assessee is hypothetical since in the present case pursuant to issuance of such notice, reassessment has in fact been completed. In any event, even Section 153 (2) makes it clear that no order of reassessment can be made after the expiry of one year from the end of the financial year "in which the notice under Section 148 was served." Therefore the service of notice is a pre-condition to finalising the re-assessment.

Section 292 BB not attracted

45. In the present case, prior to the completion of the reassessment, the Assessee has raised an objection that he has not been duly served in accordance with Section 148 of the Act. Consequently, the proviso to Section 292 BB is attracted and Revenue cannot take advantage of the main portion of Section 292 BB. In any event, as rightly pointed out by Mr. Vohra, and as held by the Special Bench of the Tribunal in *Kuber Tobacco Products (P.) Ltd.* v. *Dy. CIT* [2009] 28 SOT 292 (Delhi) (SB), Section 292 BB which was introduced with effect from 1st April 2008 and is prospective.

Conclusions

46. To summarize the conclusions:

(*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.

(*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 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.

(*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.

47. On the facts of the present case, the Court finds that the ITAT was right in its conclusion that since no proper service of notice had been effected under Section 148 (1) of the Act on the Assessee, the reassessment proceedings were liable to be quashed. Consequently, the question framed

is answered in the affirmative, i.e., in favour of the Assessee and against the Revenue.

48. The appeal is dismissed but, in the facts and circumstances of the case, with no order as to costs."

12. After appreciating the facts of the present case, we are of the considered view that the facts contained in the present case are similar to the facts which are contained in the case of CIT Vs. Chetan Gupta (Supra), therefore, we are of the view that the question of service of notice U/s 148 of the Act is a jurisdictional requirement.

13. As per the facts of the present case, admittedly no attempt was made by the revenue to serve a notice to the assessee at the address provided by him. The revenue was also made aware of this lapse, as the assessee while filing of its return has made a note therein it was mentioned that no notice U/s 148 was served upon the assessee and moreover, the assessee have also served a letter to the revenue thereby categorically mentioning that no service of notice was effected upon the assessee and even the revenue in his reply dated 07/11/2017 has no where mentioned that notice U/s 148 of the Act was ever served upon the assessee. Hence, merely participation of the assessee in the proceedings is not a waiver to the service of notice U/s 148 upon the assessee. As per record, prior to completion of reassessment, the assessee has raised a categorical objection that he has not been duly

served in accordance with Section 148 of the Act. Therefore, the 'proviso' to Section 292BB is attracted and Revenue cannot take advantage of the main portion of Section 292BB. This view has already been taken by the Special Bench of the Tribunal in Kuber Tobacco Products (P.) Ltd. v. Dy. CIT [2009] 28 SOT 292 (Delhi) (SB).

14. After having gone through the judgment cited by both the parties and more particularly the decision of the Hon'ble Delhi High Court in the case of CIT Vs Chetan Gupta (supra), which is squarely applicable to the facts of the present case, we are also of the view that:

(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.

(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 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.

(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."

From the entire crux of the matter, we found that the revenue has failed to bring on record any positive evidence to prove that the notice U/s 148 of the Act was served upon the assessee whereas the assessee has successfully placed on record letter dated 07/11/2017 issued by the department wherein it has no where been mentioned that the notice U/s 148 was ever served upon the assessee. In view of the above facts and circumstances, we can safely conclude that there was no 'proper service' of notice U/s 148 of the Act was effected in the present case before completion of reassessment u/s 147 r.w.s 143(3). Therefore, we set aside the orders of the lower authorities and quash the proceeding U/s 148 of the Act. This ground of appeal is allowed.

15. Since we have already held the reassessment proceedings finalized by the A.O. as invalid and have quashed the same, therefore,

the other grounds raised by the assessee become infructuous in view of our above finding.

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

Order pronounced in the open court on 11th September, 2020.

Sd/-	Sd/-
(रमेश सी शर्मा)	(संदीप गोसाईं)
(RAMESH C SHARMA)	(SANDEEP GOSAIN)
लेखा सदस्य / Accountant Member	न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur
दिनांक / Dated:- 11th September, 2020

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

1. अपीलार्थी / The Appellant- Girirajkripa Developers Pvt. Ltd. Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward-3(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 168/JP/2020)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar