

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

I.T.A. No. 307/Asr/2023
Assessment Year: 2010-11

Mandeep Malli
W/o Sukhvir Singh Khosa
Vill. Kotla Suraj Mal,
Teh. Shahkot, Jalandhar
[PAN: AZVPM7128D]
(Appellant)

Vs.

ACIT (In situ),
Nakodar, Nakodar
(Respondent)

Appellant by : Sh. Rohit Kapoor, CA &
Sh. V. S. Aggarwal, ITP
Respondent by : Sh. Rajiv Wadhwa, Sr. DR
Date of Hearing : 01.05.2024
Date of Pronouncement : 07.05.2024

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal has been filed by the assessee against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 01.09.2023 in respect of Assessment Year: 2010-11 which is arising out of the Assessment Order passed dated 30.11.2016 by the Income Tax

Officer, Ward Nakodar u/s 144 of the Income Tax Act, 1961 challenging therein validity of assessment order passed by u/s 144/47 as bad in law in view of the invalid service of notice u/s 148 of the Act as per procedure laid down as per Rule 17 of CPC Code of Civil Procedure, 1908.

2. At the outset, the Id. counsel for the assessee has submitted that the notice u/s 148 dated 27.03.2017 issued by Income Tax Officer, Ward Nakodar has been stated to be issued on 15.03.2017 and served on the assessee by way of affixture through inspector on 27.03.2017 without either presence or even signature of two independent witnesses of the neighborhood as per the procedure referred in section 282 read with Rule 12, 17 and Rule 19 of Order (v) of Civil Procedure Code, 1908. The copy of affixture order is placed on record (APB pg. 5). The Id. counsel argued that the said notice dated 27.03.2017 cannot be issued and served on 20.03.2017 i.e. one week before, by way affixture through inspector and in absence of two independent witnesses, the service of such notice is invalid as per procedure laid down in section 282 of the CPC, 1908 as above. The Id. counsel submitted that the appellant challenged the assessment order before the Id. CIT(A) that the assessment order passed by the AO is bad in law raised vide ground no. 3 which remain un-adjudicated. The counsel has contended that the non-service of notice u/s 148 is purely legal issue, renders the assessment orders invalid in absence of even improper service of notice. He contended that the Id. CIT(A) failed to appreciate the merits of the case and has not made efforts to analyze the fact regarding the service of notice and validity of the assessment order. In support, he placed reliance on the judgment delivered by the Hon'ble Apex Court in the case of Commissioner of Income Tax v. Ramendra Nath Ghosh [1971] 82 ITR

888 (SC) and submitted that the Apex Court observed that where the report of the serving officer did not mention names and addresses of person who identified place of business or assessee nor he mentioned in his report or in affidavit filed by him that he personally knew place of business of assessee, service of notice must be held to be not in accordance with law, and, therefore, assessee could not be said to have been given proper opportunity to put forward their case as there was not a proper service.

3. Per contra, the Id. DR stands by the impugned order. However, he could not controvert the contention raised by the Id. AR regarding invalid service of notice u/s 148 by way of an affixture as per procedure laid down as per Rules 20 or order (v) of CPC.

4. We have heard both the sides, perused the material on record, impugned order and case law cited before us. It is admitted fact on record that the notice u/s 148 was dated 27.03.2017 (APB pg. 2), however, the AO has stated that the notice was issued on 15.03.2017 and served upon the assessee on 20.03.2017. In our view, it is beyond human probabilities to issue and serve notice a week before a date mentioned in the alleged notice issued u/s 148 (APB pg. 2). For reference, the alleged notice is reproduced here under:

OFFICE OF THE INCOME TAX OFFICER, NAKODAR.Golden Avenue Colony, Jalandhar Road, Nakodar - 144040
Phone/FAX : 1821-220741 Email : nakodar.ito@incometax.gov.in**NOTICE u/s 148 OF THE INCOME TAX ACT, 1961**

No. : ITO/Nkd./2016-17/3584

Dated : 27.03.2017

To

Smt. Mandeep Malli W/o Sh. Sukhvir Singh Khosa,
VIII. Kotla Suraj Mal, Tehsil Shahkot.

Madam,

Whereas I have reason to believe that your income/income of _____ in respect of which you are assessable/chargeable to tax for the Assessment Year 2010-11 has escaped assessment within the meaning of section 147 of the Income-tax Act, 1961.

I, therefore, propose to assess/re-assess the income/recomputed loss/depreciation allowance for the said assessment year and I hereby require you to deliver to me within 30 days from the date of service of this notice, a return in the prescribed form of your income/the income of _____ in respect of which you are assessable for the said Assessment Year.

This notice is being issued after obtaining the necessary sanction of the Principal Commissioner of Income-tax-2, Jalandhar.



Yours faithfully,

(Sunil Airi)
Income-tax Officer,
Nakodar

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M. Malli


5. From the aforesaid notice, it is evident that the date mentioned on the notice issued u/s section 148 of the Act is 27.03.2017 which cannot be issued on 15/03/2017 and served on 20/03/2017. Such factual mistakes and errors in the dates mentioned on the notice, and that of date of issue and date of service discussed in the assessment order rendered the basic foundation of the assessment erroneous and void ab-initio. Further, there was gross violation of procedure in service of notice by way of affixture as laid down u/s 282 read with Rule 12, 17 and 19 or Order (v) of Civil Procedure Code, 1908 as the notice u/s 148 was served through affixture has been witnessed by Sh. Joginder Lal, TA and Paras Ram, Inspector of the office and not by two independent witnesses as required under the law.

6. AS per rule 17 of order V of CPC mandates, an independent local person be the witness for service through affixture and for the purpose of having been associated with the identification of the place. However, on perusal of the affixture report [Refer page No 5 of the PB] shows that there was no independent local person as a witness and there is no evidence that anyone identified the place as belonging to the assessee before such affixture. (APB pg. 5) as evident from affixture notice which reads as under:

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AFFIXTURE ORDER


I, Sunil Airi, Income Tax Officer, Nakodar, is satisfied that Notice u/s 148 of the Income Tax Act, 1961 dated 27.03.2017 issued by the undersigned, in the case Smt. Mandeep Malli W/o Sh. Sukhvir Singh Khosa, VIII. Kotla Suraj Mal, Tehsil Shahkot for the Assessment Year 2010-11 cannot be served in the ordinary way. I, therefore, direct Sh. Paras Ram, Inspector and Sh. Joginder Lal, TA of this office to effect the service of the said notice by affixture under the Code of Civil Procedure, 1908 (5 of 1908) on the conspicuous part of the place where the assessee is known to have last resided or carried on business or profession for gain or is presently residing.


(Sunil Airi)
Income Tax Officer,
Nakodar.

Dated: 29/3/17

A copy of this order should be placed on the Notice Board of this office.




(Sunil Airi)
Income Tax Officer,
Nakodar.

Sir,
As directed, I visited village Kotla Suraj mal to serve the notice u/s 148 dt 27.03.2017 in the case of Smt Mandeep Malli w/o Sh Sukhvir Singh Khosa for the A.Y. 2010-11. From nearby, it is gathered that amresh Smt Mandeep Malli is living abroad i.e. in U.S.A. So the notice was served by affixing on the main gate of the amresh house.

Paras Ram
Inspector
29/03/2017

Joginder Lal
TA.
29/3/2017

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TRUE COPY
M. Malli

7. The Hon'ble jurisdictional High Court in the case of CIT v. Naveen Chander [2010] 323 ITR 49 (Punjab & Haryana), has observed that the Tribunal had record to the report issued by the process server. According to the report of the Inspector/notice server, the notice was affixed on the main door of Shop No. 33. There was no evidence of any local person having been associated with identifying the place of business of the assessee-respondent and the report was not witnessed by any person at all. It has been found to be flagrant violation of rule 17 of Order (v) of the Code which lays down a procedure to serve notice by affixture. Hence, the Tribunal was justified in holding that having regard to the report of the Inspector/notice server, the requirements of the code of Civil Procedure had not been fulfilled and the block assessment completed in pursuance to the notice was not valid.

8. In another case, the Coordinate Amritsar Bench in the case of Parshotam Singh v. ITO, Ward-1(4), Mansa [2016] (8) TMI 1180 has held as under:

“Validity of reopening of assessment – whether no laid down procedure as per CPC has been followed and also the affixture of notice in the absence of independent witness was not a legal service of notice - Held that: - We find that it is an undisputed fact that notice u/s 148 was issued on 30.03.2010 and on the same date it was affixed at the residence of assessee. Therefore, from the above, it is apparent that before service of notice through affixture no efforts were made earlier to service the same on the assessee through other means.

In the present case we find that the admittedly no effort was made by Assessing Officer to serve the notice in an ordinary way. Further there is no order passed by Assessing Officer to the effect that service by affixture was made in accordance with law. The so called notice through affixture is in utter disregard to Rule 17, 19 & 20 of order V of CPC. - Decided in favour of assessee."

9. In the present case, there was no evidence of any local person having been associated with identifying the place of business of the assessee-respondent and the report was not witnessed by any person at all. In our view, it has been clearly flagrant violation of rule 17 of Order (v) of the Code 1908 which lays down a procedure to serve notice by affixture. Accordingly, as per the aforesaid report of the Inspector/notice server, the requirements of the code of Civil Procedure have not been fulfilled.

10. Following the Hon'ble jurisdictional High Court (supra), the reopening assessment completed in pursuance to the alleged notice u/s 148 of the Act is held to be not valid and as such, the assessment order is quashed as void ab initio.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 07.05.2024

Sd/-
(Udayan Dasgupta)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T.

True Copy

By Order