

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-683/Del/2013
(Assessment Year: 2003-04)**

Amarjeet Kaur Bawa
28/72, Punjabi Bagh,
New Delhi.

**PAN No. AFPPB7598Q
Appellant**

Vs. ITO
Ward 25(3),
D Block, Vikas Bhawan,
I.P. Estate, New Delhi.

Respondent

Assessee by None
Revenue by Shri Kanv Bali, Sr. DR

Date of hearing: 02.12.2020
Date of Pronouncement : 10.12.2020

ORDER

PER K. NARASIMHA CHARY, JM

Aggrieved by the order dated 9/2/2011 passed by the learned Commissioner of Income Tax (Appeals)-XXIV, New Delhi ("Ld. CIT(A)"), for the assessment year 2003-04, Mrs Amarjeet Kaur Bawa ("the assessee") filed this appeal challenging the finding of the Ld. CIT(A) that the notice under section 147/148 of the Income Tax Act, 1961 ("the Act") was duly served on the assessee at her address 5/48,, West Punjabi Bagh, New Delhi.

2. Brief facts of the case are that a notice under section 148 of the Act was issued to the assessee on 26/3/2010 after recording the reasons thereof on the basis of the information received from the investigation wing in the form of CD in respect of entry providers in the form of bogus gift/loans/share application money/capital gain, et cetera by cheque/DDs in lieu of the cash received from

intending beneficiaries and the assessee was also one of the beneficiaries as per the list of beneficiaries provided by the investigation wing. According to the Revenue the assessee had deposited an amount of rupees 2.5 lakhs twice in her bank account on 24/2/2003 and 26/2/2003, respectively which was received from Shri Kamlesh Malik routed through his bank account maintained with State Bank of Bikaner and Jaipur. Learned Assessing Officer recorded that the assessee did not respond to the notices issued and section 148 of the Act and also to the notice under section 142 (1) of the Act, leading to the assessment of her income under section 144 read with section 147 of the Act by order dated 20/12/2010, by making an addition of Rs. 5.1 lakhs to the income of the assessee

3. Aggrieved by such an assessment, assessee preferred appeal before the Id. CIT(A) on several grounds, including the challenge to the service of notice under section 148 of the Act and also further, stating that the assessment order was passed ante-dated. Assessee also challenged the addition on merits. Id. CIT(A) by way of the impugned order confirmed the assessment and held that the allegations of the assessee are far from truth and circumstances of the case are not supporting the plea of the assessee that the notice under section 148 of the Act was not served on the assessee. Id. CIT(A) also justified the addition of Rs. 5 lakhs and the commission amount of Rs. 10, 000/-.

4. Aggrieved by the impugned order, assessee preferred this appeal, but the challenge is confined only to the non-service of notice under section 147/148 of the Act.

5. When the matter is called, neither the assessee nor any person on behalf of the assessee entered appearance. It could be seen from the record that for non-prosecution of the appeal by the assessee, it was dismissed ex parte by order dated 14/12/2016, but subsequently, at the request of the assessee, such an *ex parte* order was recalled on 31/7/2019 in MA Number 198 /Del/ 2017. Subsequently, several notices were issued to the address furnished by the

assessee, but there is no representation from the assessee. If the assessee is staying in such address, there would be no reason for nonservice of the same. If the assessee is not available in such address, for any reason, it is for the assessee to make necessary arrangements with the postal department either to deliver the mail to any authorised person on behalf of the assessee, or to make arrangement with the postal department to redirect the mail to any new or temporary address of the assessee or to retain the mail till the assessee comes back and claims the same. When the new and old address of the assessee are in the same locality, it cannot be believed that the assessee does not make such arrangement with the postal department. If the assessee does not make any such arrangement, the reason for the non-service of notice would be attributable to the assessee alone, and it is not open for the assessee to comply and against the same. We, therefore, do not find any justification to adjourn the matter. We, therefore, proceed to decide the appeal basing on the material available on record, after hearing the learned DR.

6. Grievance of the assessee is that there is no due and proper service of notice issued and section 147/148 of the Act. On verification of the record, Ld. CIT(A) found that notice under section 148 of the Act was duly issued to the assessee on 26/3/2010 by speed post bearing number ED 890 828520 O IN to her address at 5/48, West Punjabi Bagh, New Delhi, which address was provided by the. DIT (Inv). There is no dispute that the assessee stayed at such address for some point of time. Though the assessee contended that the said premises was sold out and the assessee moved out of the same during the year 2007-08 and thereafter filed the return of income from the new address, namely, 28/72, West Punjabi Bagh, New Delhi, no evidence in support thereof is forthcoming. According to the Ld. CIT(A), there is no specific information to the Department as to the change of address.

7. It could further be seen from the record that there is no dispute that when the assessment order was passed on 20/12/2010, and dispatched to the address of the assessee at 5/48, West Punjabi Bagh on 27/12/2010, the same was returned with the endorsement "left" made by the postal servant on 28/12/2010. Basing on this learned DR submitted that when the notice could not be served, as on 28/12/2010, the postal envelope was returned by the postal department with suitable endorsement and this is conspicuously absent when the notice under section 148 of the Act was issued on 26/3/2010 which indicates that as on 26/3/2010, the assessee was very much present in the said address or received such mail addressed to the old address, and that is reason why the postal envelope was not returned by the postal department. Learned DR further submitted that there is no evidence as to when exactly the assessee moved out of the property and merely because the return was filed from the new address of 28/72, West Virginia be Bagh, it cannot be said that the assessee was not available at 5/48, West Punjabi Bagh or because the assessee was living in the same locality the postal servant must have delivered the mail to the old address at the new address, and the fact that the postal envelope was not returned indicates that the assessee accepted the same. When the notice could not be served in the old address, the postal and envelope was returned.

8. Since the presumption as to the service of notice when the notice was issued to proper address by registered mail with postage prepaid is in favour of the Department, it is for the assessee to rebut the same with cogent evidence. It is always open for the assessee to verify with the postal authorities with reference to the speed post number and submit the evidence of nonservice to him, which the assessee did not do. In the circumstances, mere statement of the assessee that there is no service of notice under section 148 of the Act cannot rebut the presumption. We, therefore, do not see any reason to reject the reasoning and finding of the Ld. CIT(A). Consequently, we dismiss the grounds of appeal.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on 10/12/2020.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER
Dated: 10.12.2020
*Kavita Arora, Sr. PS

Sd/-
(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

TRUE COPY

ASSISTANT REGISTRAR
ITAT NEW DELHI