

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-1" NEW DELHI
(THROUGH VIDEO CONFERENCING)

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA Nos.9816,9817/DEL/2019
A.Y.: 2010-11

M/s Trove Marketing (India),
Private Ltd.,
E-21/183, Sector-3, Block-E21,
Rohini, New Delhi
(PAN:AADCT0810H)

vs.

ITO, Ward-25(4),
R. No. 188, C.R. Bldg.,
New Delhi

(Appellant)

(Respondent)

Assessee by : Shri. Raj Kumar, CA
Shri. Sumit Goel, CA
Department b : Sh. Prakash Dubey, Sr. DR

ORDER

ITA No. 9816/Del/2019

The assessee has filed the present appeal against the impugned order dated 09.10.2019 passed by learned CIT(A), New Delhi relating to the assessment year 2010-11 on the following grounds:-

- 1. That, as per asstt. order, notice u/s.148 issued on 31.03.17, reed, back un-served and thereafter no other notice u/s.148, again served before framing asstt. order, makes the whole reassessment proceedings and consequential asstt. order as without jurisdiction, illegal and unsustainable in law.*
- 2. That the impugned asstt. framed in the name of company vide order Dtd.26.12.17 is nonest and un-enforceable in law as the assessee company did not exists as on that date on account of its name being struck off from the register of members w.e.f. 30.06.17.*
- 3. That in the absence of providing reasons of reopening and thereby denying the opportunity of objecting the reopening, makes the whole proceedings illegal and unsustainable in law.*
- 4. That under the facts and circumstances the initiation of proceedings u/s.147 / 148 is unsustainable in law and without jurisdiction, mechanical, without*

application of mind and without existence of such reasons which may justify the initiation of reassessment proceedings.

5. *That under the facts and circumstances the approval u/s.151 of the higher authorities if any taken, being mechanical and not legally competent to justify the initiation of reassessment proceedings.*
6. *That under the facts and circumstances there is no justification in law and on merits in making and sustaining addition of Rs.29,05,378/- u/s.68 on the basis of information as per 26AS, TDS form.*
7. *That under the facts and circumstance Ld. A.O erred in not giving the benefit of TDS as per form 26AS, after taxing the income on which TDS has been deducted.*

2. In this case, an information received on NMS Portal that the assessee company has received a sum of Rs. 29,05,378/- which was not returned and brought to tax in the total income of the assessee company for the Financial Year 2009-10 relevant to Assessment Year 2010-11. It was further seen that the assessee company had not filed its return of income for the Assessment Year 2010-11. The Assessing Officer issued a notice to the assessee through postal service which remained unserved. The above referred sum of Rs. 29,05,378/- has escape the assessment and accordingly he issued a notice under section 148 of the Income Tax Act, 1961 (hereinafter called 'the Act') dated 31.03.2017 after recording the reasons and after obtaining approval from the competent authority.

3. Notice under section 148 of the Act was issued on 31.02.2017 and sent by speed post at the available address but the same is returned back with postal remarks 'no such person'. Later, various notices as required by law were also issued but no one attended the assessment proceedings, in spite of notice issued to the Director of the assessee company. The matter was getting barred by limitation on 31.12.2017 and assessee has also not filed any return in compliance of the notice issued under section 148 of the Act. The AO completed the assessment under section 147 / 144 of the Act on the basis of evidence available with him and made the addition of Rs. 29,05,378/- as unexplained credit under section 68 of the I.T. Act, vide

order dated 26.12.2017. Aggrieved by the same, assessee filed an appeal before the learned First Appellate Authority, who vide impugned order dated 09.10.2019 uphold the assessment order and dismissed the appeal of the assessee. Now the assessee has filed the present appeal.

4. At the time of hearing, learned counsel for the assessee drew our attention towards order passed by the Revenue authorities and one paper book containing page 1 to 66 in which he has attached Index of paper book, public notice of MCA 27.04.2017, notice of striking off and dissolution dated 30.06.2017, master data of co. from MCA website, form 26A, sub. to CIT(A) dated 04.10.2019, Delhi ITAT in Anujay Hycare Products (P) Ltd., Delhi High Court – CIT vs. Vived Marketing Services (P) Ltd., Delhi ITAT- IMPSAT (P) LTD VS. ITO, Delhi High Court – Pr. CIT vs. vs. Nokia Solutions & Network India (P) Ltd., Delhi High Court – Pr. CIT vs. Maruti Suzuki India Ltd., Delhi High Court – Spice Infotainment Ltd. vs. CIT, Delhi ITAT-Galaxy Technosys Pvt. Ltd., vs. ITO and Order V, CPC 1908 (Relevant pages).

5. He has also filed the brief of synopsis in which he has made all averments on legal as well as on merits which containing page 1 to 5. Learned counsel for the assessee mainly argued on legal issue by stating that the assessment has been framed under section 14 / 144. The AO issued notice under section 148 of the Act on 31.02.2017 which was not served upon the assessee as stated in the assessment order which returned back unserved with postal remarks “no such person”. Thereafter, no attempt was made to get served either through affixture or even residence of the Directors of service of notice under section 148 of the Act on the assessee should be in accordance with section 282(1) of the Act read with order (V) Rule 12 to Rule 17 of CPC and order III Rule (6) CPC. Learned counsel for the assessee further argued that section 282 of the Act provides the mode of service as by post, by courier, in manner as

provided in the CPC, in the form of any electronic records or as provided by the board. In this case, the prescribed procedure for service of notice has not been adopted by the Assessing Officer according to the aforesaid Rule therefore, the assessment framed by the Assessing Officer is illegal and liable to be cancelled and similarly the impugned order passed by the learned First Appellate Authority is also liable to be cancelled which is contrary to the law and facts on the record. In support of his contention, he cited a various case laws which includes CIT vs. Chetan Gupta (2015) 126 DTR 401 (Del), CIT vs. Mani Kakar 18 DTR (Del) 145 and Smt. S. Nachiar vs. ITO 326 77 (Del). He requested that the impugned order passed by the Revenue authority may be cancelled by accepting the appeal filed by the assessee. No doubt, the learned counsel for the assessee has also argued on all the issues involved in the ground of appeal and also filed written submission which is on record.

6. The learned Sr. DR relied upon the order passed by the Revenue authorities and stated that the Assessing Officer has served the notice upon the assessee on the address given by the assessee in the return of income but the assessee non cooperative before the Assessing Officer has rightly completed the assessment under section 147 / 144 of the I.T. Act and similarly learned First Appellate Authority has also rightly upheld the assessment order as per law after giving full opportunity to the assessee.

7. I have heard both the parties and perused the relevant record available with me, especially the paper book filed by the learned counsel for the assessee alongwith the written submission dated 05.10.2020 in which the learned counsel for the assessee has elaborately pointed out that all issues involved in the present appeal. As clear from the assessment records, the notice under section 148 of the Act was issued on 31.01.2017 are received back as unserved with postal remarks 'no such person'.

8. I have perused the assessment order and the provision of section 282(1) of the Act read with order (V) Rule 12 to Rule 17 of CPC and order III Rule 6 CPC especially the order V Rule 12 to 17 of CPC which provides the manner and procedure of service of summons etc,. In my view, the AO has not made any attempt to serve the assessee by affixture or any other manner as prescribed under the aforesaid provision of law in my view that no notice under section 148 of the Act has been served upon the assessee and the assessment framed in absence of this notice is illegal in contrary to provision of law and not sustainable in the eye of law therefore, I cancel the assessment order and impugned order passed by the Ld. CIT(A). My view is supported by various case laws which includes CIT vs. Chetan Gupta (2015) 126 DTR 401 (Del.), CIT vs. Mani Kakar 18 DTR (Del) 145 and Smt. S. Nachiar vs. ITO 326 ITR 77 (Del.), in which it is held that service of notice under section 148 of the Act on the assessee is a jurisdictional requirement and must be mandatory complied with and it should be in accordance with section 282(1) of the Act read with Rule Order V Rule 12 CPC and Order III Rule 6 CPC. The onus on the Revenue to show that proper service of notice has been affected on the issue or agent duly empowered by him to accept the notices. I have not seen any evidence on record regarding service of notice issued u/s 148 of the I.T. Act.

9. Keeping the facts and circumstances of the present case and the provision of law mentioned above as well as the case laws discussed above, the present appeal filed by the assessee is allowed and the impugned order passed by the Ld. CIT(A), is cancelled by deleting the addition in dispute. Since, I have cancelled the impugned order on legal issue at discussed above therefore, there is no need to adjudicate the other issues that has become academic.

ITA No. 9817/Del/2019

10. The assessee has filed the present appeal against the impugned order dated 10.10.2019 passed by learned CIT(A), New Delhi relating to the assessment year 2010-11 on the following grounds:-

1. *That the initiation of penalty proceedings vide issuance of 1st notice Dtd.14.12.17 /26.12.17 and finalizing these proceedings vide penalty order Dtd.28.06.18, both, initiation as well as completion done in the name of assessee company on the dates when the assessee company was not in existence on account of striking off its name from the register of members by ROC makes the initiation as well as the impugned penalty order without jurisdiction, illegal, invalid and unsustainable in law.*
2. *That the show cause notices are fatally defective for not specifying the charge as to whether for concealment of income or for furnishing inaccurate particulars of income, making the initiation as well as whole proceedings invalid and unsustainable in law.*
3. *That the impugned penalty order is illegal and unsustainable in law as it proceed to levy the penalty for the same addition under both the charges i.e. for furnishing of inaccurate particulars of income as well as for concealment of income, which makes the penalty order invalid in law.*
4. *That the Ld. A.O. erred in law and on merits in invoking provisions of sec.271 (1) (c) for the additions of Rs. 29,05,378/- on the basis of Form 26 AS and in levying penalty u/s.271 (1) (c).*
5. *That without prejudice, the penalty of Rs.8,97,760/- u/s.271(1)(c) is unsustainable even on merits."*

11. Since, I have allowed appeal filed by the assessee in quantum i.e. ITA No. 9816/Del/2019 A.Y. 2010-11 and deleted the addition on which the present penalty has been imposed by the Assessing Officer and confirmed by the learned First Appellate Authority. Hence, the penalty in dispute is deleted by accepting the appeal filed by the assessee.

12. In the result, ITA No. 9817/Del/2019 A.Y. 2010-11 is allowed.

Order pronounced in the Open Court today i.e. on 31.12.2020 in the presence of both the parties.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date: 31.12.2020

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Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar,
ITAT, Delhi Benches