

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-II' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
I.T.A .No.-1895/Del/2016
(ASSESSMENT YEAR-2007-08)**

Chander Bhan, C/o-Mahavir Singh, Advocate, 1078, Sector-15, Part-II, Gurgaon. PAN-ACWPL6223E (APPELLANT)	Vs	ITO, Ward-2, Rewari. (RESPONDENT)
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Assessee by	Sh.Mahavir Singh, Adv.
Revenue by	Sh.F.R.Meena, Sr.DR
Date of Hearing	10.11.2016
Date of Pronouncement	01.02.2017

ORDER

The present appeal has been filed by the assessee assailing the correctness of the order dated 28.01.2016 of CIT(A)-2, Gurgaon pertaining to 2007–08 assessment year on various grounds including ground No. 1 which reads as under:-

1. *“That the Ld.CIT(A) has grossly erred in rejecting the contention of the appellant regarding non service of notice u/s 148 of the I.T.Act by holding that he has failed to prove the non service of notice whereas it should have been other way round because evidence if any is in the possession of the AO.”*

2. The relevant facts of the case are that as per AIR information available with the tax authorities, it was noticed that the assessee had deposited an amount of Rs.20 lakhs in cash on various dates in Saving Bank Account Number. 02501000071202 OF the HDFC Bank Ltd, Rewari in the year under consideration. Accordingly, as per the assessment order, notice under section 148 of the Income Tax Act, 1961 was issued to the assessee after recording of reasons on 16.03.2012. In response thereto, the assessee filed its return of income on 18.02.2013 declaring a total income of Rs.4,426/-. After issuance of notices under section 143(2)/142(1) alongwith questionnaire etc. rejecting the explanation offered the assessment was concluded at an income of Rs.25,50,000/-. The assessee challenged the jurisdiction of the Assessing Officer to pass the order and also challenged the decision on merits.

3. The CIT(A) it was submitted dismissed the jurisdictional ground. Inviting attention to para 4.3 of the impugned order it was submitted that the assessee vide Ground No.2 had assailed the order on the ground that the assessment was made u/s 143(3)/148 of the Act, without proper

service of alleged notice issued u/s 148. The CIT(A) it was submitted dismissed the ground on the ground that the assessee had not produced any evidence in support of his contention. The said ground of appeal it was submitted was accordingly dismissed requiring the assessee to produce negative evidence. Accordingly, it was his limited prayer that the issue may be set-aside back to the file of the CIT(A) directing the said authority to first decide the jurisdictional issue considering the record.

4. Though the Ld. Sr.DR though relied upon the impugned order on query was unable to show what is the kind of evidence, an assessee can produce to show that no notice was served upon it. Accordingly, in the circumstances he had no objection, if the issues are restored back to the file of the CIT(A).

5. I have heard the rival submissions and perused the material available on record. I find that conclusion drawn by the CIT(A) on facts cannot be upheld. The factum of issuance of notice within time is to be proved on query by the authority whose jurisdiction is challenged for want of notice. The aggrieved party cannot be asked to lead negative evidence in support of its claim. When service of notice is challenged by a party then the onus to demonstrate that notice was issued in accordance with law is on the authority whose jurisdiction in the absence of notice is under challenge. The dismissal of assessee's ground requiring the assessee to produce evidence in support of its contention is beyond the ken of law or logic. The impugned order accordingly in view of this patent fallacy which is against all common sense and logic, is set aside and the issue is restored back to the file of the CIT(Appeals) with a direction to first decide the jurisdictional issue on facts in accordance with law and thereafter to proceed to consider the issue on merits if so warranted on facts.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

The order is pronounced in the open court on 01st of February, 2017.

Sd/-

**(DIVA SINGH)
JUDICIAL MEMBER**

Amit Kumar

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI