

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI
BEFORE SHRI I. C. SUDHIR, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
I.T.A .No.-2358/Del/2012
(ASSESSMENT YEAR-2004-05)**

Mukesh Kumar
104 BD Chamber DB Gupta Road,
Karol Bagh
New Delhi.

Vs.

ITO
Ward-26(3),
New Delhi.

**PAN: AAOPK7626A
(APPELLANT)**

(RESPONDENT)

Assessee by:- None

Revenue by:- Sh. P. Dankanunjna, Sr. DR.

Date of Hearing: 14/05/2015

Date of Pronouncement: 12/06/2015

ORDER

PER INTURI RAMA RAO, AM :

This is an appeal filed by the appellant directed against the order of Id. CIT(A)-XVIII, New Delhi in Appeal No.95/11-12 dated 01.03.2012 for the assessment year 2004-05. These grounds raised in this appeal are as under:

- “1. That the learned CIT(A) has erred both in law and on facts by upholding assessment order framed by assessing officer u/s 144/147 of the Act, determining the alleged total income of Rs.4,53,179/- against the income returned of Rs.1,13,710/- by taking recourse to the provisions of section 147/148 of the IT Act and inter alia making wholly unwarranted addition of Rs.9,13,710/- on account of unexplained and bogus gift.*
- 2. That the notice u/s 148 of the IT Act dated 16/03/2009 is bad in law and without jurisdiction in as much as there was no material or evidence on record to form a reason to believe that any income of the assessee, for the concerned assessment year has escaped assessment. The information received from DIT (Inv.)-I, New Delhi, was wholly*

insufficient and could not be cogent material to assume a valid jurisdiction u/s 147/148 of IT Act. Learned CIT(A) turned down the submission of the assessee without looking in to the detail.

3. *That the assessment as framed is ab-initio being without jurisdiction as same has been framed without confronting to the assessee any material or evidence received from the DIT (Inv)-I, New Delhi, to show that the assessee has received bogus accommodation entry amounting to Rs.9,13,710/-. The assessment has been made on complete non application of mind. Learned CIT(A) ignored the reply/rebut of remand report submitted by the assessee. No opportunity for cross examination was given by the CIT(A).*
4. *That the learned CIT(A) has erred both on facts and law by upholding the impugned addition u/s 68 of the Act, failing to appreciate that provision of section 68 of the Act were wholly inapplicable as the assessee never maintained any books of accounts.*
5. *That in any case, the impugned assessment has been framed in violation of the principles of natural justice without granting to the assessee a fair, proper and reasonable opportunity to the instant case. ”*

2. Briefly stated the facts of the case are that the appellant is an individual. He filed return of income for A.Y. 2004-05 subsequently on the basis of information received from Investigation Wing, New Delhi that the appellant had received an entry of Rs.4 lac from one Shri Trilok Chand Bansal on 3rd September 2003 and Rs.4 lac from Shri Subhash Gupta on 4th September 2003, a notice u/s 148 of the Income Tax Act was issued on 16th March 2009. In response to said notice, the appellant submitted that the return filed u/s 139 may be treated as return in response to section 148 of the Act. From the assessment order, it was clear that the notice u/s 148 was issued by the ITO Ward-26(4), New Delhi. Based on the reply filed by the ld. Representative the case was

transferred to ITO Ward-26(3) New Delhi who had valid jurisdiction over the appellant. The appellant has not complied with the notices u/s 143(2) and 142(1) of the Act, therefore, the AO was constrained to complete assessment ex parte by bringing to tax the said amount of Rs.8 lac.

3. Being aggrieved, the appellant filed an appeal before the CIT(A)-XVIII, New Delhi, who vide order dated 1st March 2012 in Appeal No.95/11-12 had dismissed the appeal. It was contended before the ld. CIT(A) that the re-assessment proceedings u/s 147 are invalid in law, inasmuch, as there were no reasons to believe that the assessment got escaped tax. It was further contended that the notice issue u/s 148 was invalid, since the ITO who issued notice u/s 148 had no valid jurisdiction over the appellant. On the merit it was contended that the appellant discharged his onus that lying upon the appellant as the identity and genuineness and creditworthiness of the lender have been proved by filing the PAN and ITR of the creditors, however, the ld. CIT(A) has rejected the contention of the appellant on the legality of the reassessment proceedings and as well as on merits. Aggrieved the appellant is before us.

4. No one was present on behalf of the appellant. Ld. Sr. Departmental Representative has placed reliance on the order of the lower authorities.

5. We perused the relevant material on record. In the present case the notice u/s 148 was issued on 2nd March 2009 by ITO Ward-26(4) New Delhi. After receipt of notice the appellant had responded through its authorized

Representative and submitted the copy of the return filed under provisions of section 139. After noticing that the jurisdiction over the appellant is vested with ITO Ward-26(3), the file was transferred by ITO Ward-26(4) to ITO Ward - 26(3). The ITO Ward-26(3), New Delhi had proceeded with the framing assessment without issuing fresh notice u/s 148. It means that ITO Ward-26(4), New Delhi had no valid jurisdiction over the appellant, at the time of issuing notice u/s 148 of the Act. In such circumstances, it was held by the Honøble Allahabad High Court in the case of CIT Vs. M/s MT Builders Pvt. Ltd., (2012) 349 ITR 271 (All.) that the notice issued by an Officer who had no valid jurisdiction over the assessee is invalid. The notice under Section 148 of the Act issued by the Income Tax Officer, Ward-26(4) is non est in the eyes of law since he had no valid jurisdiction over the appellant either territorial as notified under Section 124 of the Act or by transferring the case under the provisions of Section 127 of the Act. Now, the question is whether the action of the Income Tax Officer, Ward-26(3) New Delhi was valid in law in concluding the assessment proceedings based on the notice issued under Section 148 of the Act by the Income Tax Officer, Ward-26(4) who had no valid jurisdiction to issue the notice. The issue of valid jurisdiction is a condition precedent to the validity of any assessment under Section 147 of the Act; therefore, the assessment made pursuant to such notice is bad in law. In support of this proposition we rely upon the cases of Honøble Apex Court in the cases of Y. Narayana Chetty Vs. ITO, 35 ITR 388, 392 (SC); CIT Vs. Maharaja Pratap singh Bahadur, 41 ITR 421

(SC); and CIT Vs. Robert, 48 ITR 177 (SC). In the light of the above settled principle of law, we have no hesitation to quash the reassessment proceedings since there was no valid notice pursuant to which the reassessment proceeding was made in the present case. Accordingly, the appeal filed by the appellant is allowed.

6. Since we have quashed the reassessment proceedings, we find it not necessary to adjudicate the grounds relating to the merits of the addition.

7. In the result, the appeal is allowed.

Order pronounced in the open Court on 12/06/2015.

Sd/-

Sd/-

**(I.C. SUDHIR)
JUDICIAL MEMBER**

**(INTURI RAMA RAO)
ACCOUNTANT MEMBER**

Dated: 12 /06/2015

AK VERMA

Copy forwarded to:

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

ASSISTANT REGISTRAR

		Date	Initial	
1.	Draft dictated on	11/06/2015		PS
2.	Draft placed before author	12/06/2015		PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			PS/PS
6.	Kept for pronouncement on			PS
7.	File sent to the Bench Clerk			PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			