

DHC in Eshaan Holdings: Service of Notice Section 148: ITAT order reaffirmed

“The first notice issued on 29.1.2004 by speed-post was said to have been served on the old address at East of Kailash. There is no proof of service on record. Even otherwise, this is not valid service because the assessee had already filed its return for the assessment year 2003-04 on 28.11.2003 and in this return the address shown was Panchsheel Park. Thus, the record of the department already contained the new address of the assessee. Before issuing the notice under section 148 it was expected of the Assessing Officer to have checked up if there was any change of address, because valid service of a notice of reopening the assessment is a jurisdictional matter and this is a condition precedent for a valid reassessment. The contention of the learned counsel for the assessee that the Act does not provide for a formal intimation of the change of address and therefore the only place where one would find if there has been a change in the address is the return of income (for later years) contains force...

Hence even if there is scope for drawing a presumption, the assessee has come before the Assessing Officer and denied service. The notice served by affixture is also not valid service because it was done at the old address, which is not the last-known address, as the new address has already been intimated to the department in the return of income filed for the assessment year 2003-4 and that is the last-known address"