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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No.4050/Del/2017
Assessment Year: 2012-13

ACIT, Central Circle-30, New Delhi.	Vs	Rajnil Sales Pvt. Ltd., Room No.91, 4th Floor, 2B Grant Lane, Kolkata, West Bengal. PAN: AABCR3491C
(Appellant)		(Respondent)

Assessee by	:	Shri Ajay Wadhwa, Advocate & Ms Ragini Handa, Advocate
Revenue by	:	Shri Pitambar Das, CIT-DR
Date of Hearing	:	25.11.2024
Date of Pronouncement	:	18.12.2024

ORDER

PER ANUBHAV SHARMA, JM:

This appeal is preferred by the Revenue against the order dated 31.03.2017 of the Commissioner of Income Tax (Appeals)-30, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No.320/15-16/2297 arising out of the appeal before it against the order dated 31.03.2015 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the ACIT, Central Circle-30, New Delhi (hereinafter referred to as the Ld. AO).

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2. The facts relevant are that the return of assessee was filed on 28.09.2012 with ITO Ward/Circle-9(3) Kolkata, West Bengal. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) of the Act was issued on 8.09.2013. After the search and seizure operation conducted on Prakash Industries Ltd. on 30.12.2012, the assessee company's case was centralized with Central Circle-14, New Delhi, vide an order dated 26.11.2013 passed u/s 127 of the Act by the Commissioner of Income Tax Kolkata-III. The issue under examination during the scrutiny was share premium received by the assessee. The appellant claims to have submitted details / documents / explanation as required by the learned assessing officer for the purpose of assessment in the case of the appellant under section 143(3) of the Income Tax Act, 1961 during the course of assessment proceedings. However, the learned assessing officer has completed the assessment proceedings under section 143(3) of the Income Tax Act, 1961 vide order dated 31.03.2015 at an income of Rs 2,72,85,750/- thereby making an addition of Rs 2,71,50,000/- on account share premium treated as unexplained under section 68 of the Income Tax Act, 1961 and Rs. 1,35,750/- on account of estimated brokerage as unexplained and undisclosed income. The assessee succeeded before the ld.CIT(A) against which the Revenue is in appeal, raising following grounds;

> *"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition made u/s 68 of the Act, amounting to Rs. 2,71,50,000/- in respect of share capital/ premium/application money introduced by holding that the onus on the part of the assessee stands discharged.*

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that the assessee company was a paper company without having any tangible assets and its investments were also made in paper companies which did not have any substantive business activities and some of them were found non-existent at the given addresses. The assessee also failed to produce persons for examination controlling affairs of the share applicant companies.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that Sh. Ved Prakash Agarwal, Chairman of M/s Prakash Industries Ltd. admitted in his statement that unaccounted funds of M/s Prakash Industries Ltd. were invested in its group companies in the form of share capital/ premium, through paper companies.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in not appreciating the fact that erstwhile directors of the paper companies (before being taken over by the beneficiary) admitted the investments and receipts as bogus.

5. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 1,35,750/- made on account of brokerage @ 0.5% on amount of Rs. 2,71,50,000/- as the same was paid to the entry operator in unaccounted cash as per the statement of Sh. Ved Prakash Agarwal recorded during the course of search.

6. That the grounds of appeal are without prejudice to each other.

7. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal."

3. However, at the time of hearing, the ld. AR has pointed out that the assessee has raised following legal ground under Rule 27 of the Income-tax (Appellate Tribunal) Rules, 1963 raising the following legal ground:-

"That the Assessing Officer issuing the notice under section 143(2) of the Act did not have the jurisdiction over the case of appellant and therefore the notice dated 18.09.2013 and the consequential assessment made under section 143(3) of the Act is invalid and void ab initio."

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4. As with regard to the admissibility of the legal ground raised by assessee we are guided by the decision of Hon"ble Bombay High Court in Peter Vaz vs CIT, [2021] 436 ITR 616 (Bom) where the following additional substantial question of law was framed by the Hon'ble Court:-

"Whether in the facts and circumstances of the present case, it was open to the appellant/assessee to have supported the orders of the Commissioner (Appeals), based on the ground that the jurisdictional parameters prescribed under section 153C of the I.T. Act were not fulfilled, even without the necessity of filing any cross objections ?"

4.1 We find that while deciding the aforesaid question, the Hon'ble High Court analysed the provisions of Rule 27 of the ITAT Rules and held that an issue, which was not raised before the CIT(A) and which goes to the root of the jurisdiction of the Assessing Officer to initiate the proceedings, can be raised by way of a petition under Rule 27 of the ITAT Rules and the Tribunal should allow the assessee to raise such an issue in the appeal instituted by the Revenue, even without the necessity of filing any cross objections. Accordingly, the ld. representatives of both the sides were heard on the legal ground.

5. On behalf of the assessee, the ld. Counsel has submitted that to initiate valid proceedings under section 143(3) of the Act, mandatory notice u/s 143(2) must have been issued by the jurisdictional Assessing Officer of the assessee before 30.09.2013. It was submitted that in this case, the Assistant Commissioner of Income Tax (ACIT), Central Circle 14, New Delhi, 18.09.2013 issued notice under section 143(2) of the Act and the submission of

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ld. Counsel is that the notice under section 143(2) can be issued only by the jurisdictional Assessing Officer within the time limit of issuing notice prescribed under the law. It is submitted that before 26.11.2013 i.e, date of passing order under section 127 of the Act, the jurisdiction over the assessee was with the ITO Ward/Circle -9(3) Kolkata and not with the ACIT, Central Circle-14. Therefore, the notice issued by the ACIT, Central Circle-14 on 18.09.2013 is invalid and without jurisdiction. It is submitted that thereafter, notice under section 143(2) was again issued by the ACIT, CC-14, on 29.10.2014 and this notice is issued beyond the time period prescribed under the law for issuance of mandatory notice and is, therefore, barred by limitation. The notice is issued after the lapse of 13 months from the end of the limitation period for issuance of notice provided under the law. Thus as pert the ld, Counsel, the assessment order passed u/s 143(3) of the Act is null and void.

6. It was also pointed out on the basis of the entries in the order sheet, that it appears that some different return dated 16.12.2013 is examined. The return of Assessee was filed on 28.09.2012. Hence, the notice under section 143(2) issued on 03.09.2014 and 29.10.2014, were on the basis of a non-existent return. Thus, basic foundation of the assessment is erroneous and *void ab-initio*.

7. As with regard to copy of notice dated 19.08.2013, allegedly issued under section 143(2) issued by the ITO Ward 9(3) Kolkotta filed by the Ld. DR along with an inspector's report and copy of order sheet stating that the same was

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affixed at last known address, the ld. Counsel submitted that the address on the return is different. Ld. Counsel submitted that how did the officer go to the address mentioned in the notice? Did he try to find the address mentioned in the return? The last known address was the return address, as the return was filed on 28.09.2012 thus on incorrect address the notice is shown to be served.

8. Ld. Counsel has stressed on the fact that this notice shown to be served by affixation is invalid as no affidavit of the Inspector making affixture is filed and he has not even been examined on oath. He submitted that there is absence of two independent witnesses before whom affixture was made. Only one witness of department is self-serving. It was also submitted that in the absence of report of postal authority that notice is returned unserved there as no justification to serve by affixation. Revenue failed to produce any material on record that at the initial stage the notice u/s 143(2) of the Act was ever tried to be served through ordinary course/mode. He submitted that there is onus on AO to have recorded reason to believe that Assessee is intentionally hiding to avoid service or other reasons. Then the report should state names of persons who pointed to Assessee's place of business. The officer does not mention in his report that he knew the place of business of the Assessee or that the address at which he affixed the notice was the place of business of the Assessee. The officer made no effort to find out whether the Assessee was available at the given address. Report says affixed at a conspicuous place but there is no

mention of which conspicuous place did he affix at and the officer has not stated in his report that that he has affixed notice as per rule.

9. To support the aforesaid submissions about invalid affixation the ld. Counsel has relied the following decisions.

- K.P. Cold Storage v. ITO 2(1)(2), Agra [2020] 113 taxmann.com 7 (Agra - Trib.) Para 38,
- Shri Sanjay Badani, SA No.216/Mum/2014 para 13,14
- Dewan Kraft System (P.) Ltd. [2007] 165 Taxman 139 (Delhi) para 11
- Naveen Chander [2010] 323 ITR 49 (Punjab & Haryana) para 2;
- Wg. Cdr. Sucha Singh I.T.A.No. 1605/DEL/2012 para 5.3;
- World Wide Exports (P.) Ltd.[2004]91 ITD 519 (DELHI)-para 11, 17
- K.P. Cold Storage v. ITO 2(1)(2), Agra (2020) 113 taxmann.com 7 (Agra-Trib.) Para 33, 38;
- Mandeep Malli [2024]162 taxmann.com 637 (Amritsar-Trib.) para 6,8
- Shri Sanjay Badani, SA No.216/Mum/2014 para 14;
- KOHLI BROS. VERSUS ITO 2010 (6) TMI 646-ITAT LUCKNOW para 8.2.2
- Chandra Agencies [2011] 10 taxmann.com 176(Delhi) Para 12

10. Ld. DR has however relied the report received from the AO and it was submitted that being a search case assessment service of notice u/s 143(2) of the Act was not mandatory.

11. After giving thoughtful consideration to the material on record and the submissions, at the outset, we would like to distinguish the judgement relied by the ld. DR in the case of **Ashok Chaddha vs. ITO, (2012) 20 taxmann.com**

387 (Del) for the assertion that issuance of notice u/s 143(2) of the Act is not mandatory. The ld. DR has stressed on the fact that in the assessment order it is specifically mentioned that out of the search and seizure operations on Prakash group of industries' case the assessee's assessment was initiated after the centralization of search cases and, therefore, search provisions are applicable and there is no requirement under specific provision in the Act that search assessment is to be completed after issue of notice u/s 143(2) of the Act.

11.1 We are not in agreement with the application of said proposition to the facts of case as assessment has been completed as a regular assessment u/s 143(3) of the Act and there is no case of the AO that on the basis of any satisfaction drawn out of any incriminating material found during the search or having any bearing on the income of the assessee the assessment was conducted. Rather in assessment order it is specifically mentioned that it was case of scrutiny assessment. When there is no case of issuance of any notice u/s 153A or 153C of the Act, the claim that the case of assessee is outcome of search assessment is not sustainable. At the same time, the case of the Assessing Officer is that the notice was duly issued and served by way of affixation by the jurisdictional AO. Thus, to defend the case of the AO on the basis of the judgement in the case of Ashok Chaddha (supra) cannot be appreciated.

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12. To consider the question of service of notice u/s 143(2) of the Act was legal, it will be appropriate to reproduce the case which the AO has tried to make out and we consider it appropriate to reproduce the submissions received from the Office of the PCIT in response to the specific query of the earlier Bench to verify as to the date of issue of notice u/s 143(2) vis-à-vis the date of centralization of this case. The ld. DR had accordingly filed the written submissions and the same are reproduced below:-

> *"Sub: Written Submission in the above case-reg.*
>
> *In continuation to written submission dated 05.07.2021, 08.07.2021 it is humbly submitted that on the last date of hearing, the Hon'ble bench had directed to verify as to the date of issue of notice u/s 143(2) vis-a-vis the date of centralisation of this case*
>
> *Accordingly, AO, was asked for the details along with copy of the order sheets*
>
> *The copy of reply of the A.O. dated 29.10.2021 is enclosed herewith (Annexure-1, Page 1 to 4)*
>
> *From the same it can be seen that this is a case where notice u/s 143(2) was first issued on 19.08.2013 by ITO Ward-9(3), Kolkata being the jurisdictional Assessing Officer. However, the notice could not be served upon the assesse. Further, this being case selected for scrutiny under CASS, notice was served by affixture on 09.09.2013 by the then jurisdictional officer, i.e., ITO Ward-9(3).*
>
> *2. Subsequent to it, the case was centralised on 26.11.2013, as can be seen from the copy of AO's replied dated 29.10.2021. (As per enclosed Annexure 2). Further as per Proviso 2 to section 153A read with section 153C the assessment had abated once the search u/s 132 took place.*
>
> *Therefore, the issue of notice under section 143(2) by the then AO was correct. Also, from entries in the order sheet it is evident that the notice was served on 9.09.2013 and there is no entry for 18.09.2013 as mentioned at Para 5 of the assessment order under appeal. This therefore seems to be a typographical error. From the order sheet it is also established that entries from19/08/2013 is under one signature while entries from 6.12.2013 was*

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under a different signature till the conclusion of the hearing vide entry dated 27.03.2015 corroborating the fact that the first notices under section 143(2) were issued by the jurisdictional assessing officer only.

In view of these facts the additional ground raised by the assessee is totally incorrect and the above may please be dismissed.

Submitted by,

Sd/-
(Sushma Singh)
Pr Commissioner of Income-tax
F-Bench, ITAT, New Delhi."

13. Now, with regard to the service of notice u/s 143(2), it comes up from the assessment order that in paras 4 and 5 of the assessment order, the following facts have been narrated:-

"4. Accordingly a satisfaction note was recorded by the Assessing Officer of M/s Prakash Industries Ltd. by giving finding that the documents belonging to M/s Rajnil Sales Pvt. Ltd were found at the premises of M/s Prakash Industries Ltd. and these were handed over to the Assessing Officer of M/s Rajnil Sales Pvt. Ltd. on the basis of which satisfaction was recorded by the A.O. before issuing notice u/s 143(2) in the case of the assessee.

Having received and in possession of the documents and material for which 143(2) is invoked, based on the satisfaction and having verified the facts, the proceedings u/s 143(2) were initiated.

5. The assessee filed return of income originally u/s 139(1) vide acknowledgment no. 498720381280912 for the relevant year 2012-13 on 28.09.2012 declaring total Income at Rs. NIL. Later, the case was selected for scrutiny. The case was duly centralized with the Central circle-14, New Delhi. Accordingly, statutory notices u/s 143(2) was issued on 18/09/2013."

14. Thus, admitted case of the assessing officer is that only one statutory notice u/s 143(2) was issued on 18.09.2013. There is no mention in the assessment order that the service was by postal mode or by substituted service.

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The narration of facts in assessment order only indicate that after the centralization notice was issued on 18.09.2013. Admittedly, the case was centralized by order dated 26.11.2013 from ITO, Ward 9(3), Kolkata to DCIT, Central Circle-14, New Delhi. Furthermore, if the copy of this letter dated 26.11.2013 is examined which is also made available on record with the report of the Department, this order was passed on 26.11.2013 and the endorsement was forwarded to the concerned authorities for giving effect to the order was signed on 03.12.2013. It can be observed that at Sl.No.4 a direction is issued to ITO, Ward 9(3), Kolkata with a request to intimate the concerned assessee and send compliance report to the CIT(A), Kolkata-III, Kolkata, after physical transfer of records are completed. This even makes it questionable as to how even without the communication of the letter dated 26.11.2013, the ITO, Ward 9(3), Kolkata may have forwarded the record with the Central Circle-14, New Delhi for issuance of statutory notice u/s 143(2) on 18.09.2013.

15. At the same time, it is admitted case of the Department as per the submissions that there is no entry of 18.09.2013 in the records as mentioned in para 5 of the assessment order which is now claimed to be a typographical error. The Revenue has now come up with a case that notice was served on 09.09.2013. Now, it is a matter of fact along with the submission a copy of notice dated 18.09.2013 is filed bearing No.F.No.ACIT/CC-14/2014-15. The

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same is issued by ACIT CC-14 New Delhi. Thus, to say that 18.09.2013 is a typographical mistake cannot be accepted.

16. Now, coming to the alleged fact of service of a notice dated 19.08.2013 by JAO by affixation, the affixation report dated 09.09.2013 is first of all silent with regard to the fact that the notice were actually 'affixed' as no expression in that context is used. It will be beneficial to reproduce the said report dated 09.09.2013 here below:-

> *"Shri Manish Kaga, Inspector, attached to the O/o the 1.T.O. Ward-9(3), Kolkata solemnly affirm/declare that on 30.08.2013, I received a Notice U/s. 143(2), of the I.T. Act, 1961. dated 19.08.2013; for the assessment year-2012-13 in the case of M/s. Rajnil Sales Pvt. Ltd., PAN-AABCR3491C, Address: 2B, Grant Lane, 4th Floor, Room No. 91, Kolkata-700 012 issued by the I.T.O. Ward-9(3), Kolkata, for service.*
>
> *I attempted to contact to M/s. Rajnil Sales Pvt. Ltd. at their Office Address: 2B, Grant Lane, 4th Floor, Room No. 91, Kolkata 700 012, for service the Notice U/s. 143(2) of the I.T. Act, 1961 on 03.09.2013 at 2.30 P.M., but the assessce could not be found at that address. Again, I attempted to contact the assessee in the same address on 09.09.2013 at 3 P.M. but again the assessee could not be found at the same address. Therefore, I served the Notice U/s. 143(2) of the I.T. Act, 1961 on 09.09.2013 at 3.30 P.M on the conspicuous place at the last known address, in the presence of Shir Amalendu Adak, Inspector of Income Tax.*
>
> *Sd/-*
>
> *(Manish Kaga)*
> *Inspector, attached to the*
> *O/o the I.T.O. Ward-9(3), Kol.*
>
> *Witness: A Adak*
> *Dated: 09.09.2013"*

17. Now the said officer has merely mentioned *'Therefore, I served the notice..'*. The report is silent of the exact places where the notice was allegedly

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affixed. There is no independent witness. There is no order sheet supporting the conclusion of the AO of any denial on the part of the assessee to receive the notices or that the assessee was in any way avoiding the personal service so as to order for service by affixation. In fact without specific direction to the serving inspector to serve by way of affixation there was no right with serving inspector to serve by affixation, without endorsing in report as what compelled to serve by substituted service instead of personal service.

18. The settled proposition of law with regard to validity of service of mandatory a notice issued under the Act, by way of affixation, is taken note of by a coordinate bench in the case of **Shuaib Ahmed, New Delhi vs Ito Ward - 65(2), New Delhi decided on 16 January, 2023 vide I.T.A. No. 7782/Del/2019,** wherein reliance was placed on the decision of **Ess Aar Exports Vs. I.T.A. No. 7782/Del/2019 Income Tax Officer [(2005) 94 ITD 484 (Delhi)]** and the settled proposition of law is discussed in length and we consider it appropriate to reproduce the same here in below;

"In the case of Ess Aar Exports Vs. Income Tax Officer (supra) the Tribunal held as under:-

"11. It is provided in Section 282 of Income-tax Act that notice under the Act is to be served either by post or as if it was summoned under the Code of Civil Procedure. Notice dated 5.3.2001 has been claimed to have been served through affixture as provided in Code of Civil Procedure. Here provisions of Order V Rules 17 to 20 of CPC are relevant. After taking notice of above statutory provisions, their Lordships of Supreme Court in the case of Ramendra Nath Ghosh v. CIT, 82 ITR 888, observed as under (as per head note):
"The Inspector of Income-tax who had to serve notices under Section 33B of the Income-tax Act, 1922, claimed to have served the notices by affixing them on the assessee's place of business but in his report did not mention the names and addresses of the persons who identified the place of business of the assessees, nor did he mention in his report or in the affidavit filed by him that he personally knew the place of business of the assessees. The assessees, however, claimed that they had closed their business long before the notices were

issued. On writ petition filed by the assessees, the High Court held that there was no proper service on the assessee and the orders of the Commissioner pursuant thereto could not be sustained. On appeal to the Supreme Court:
Held, affirming the decision of the High Court, on the facts, that the service of the notices was not in accordance with the law and, therefore, it could not be said that the assessees had been given a proper opportunity to put forward their case as required by Section 33B of the Income-tax Act.
Held also, that the question whether the assessees had been served in accordance with the law or not was essentially a question of fact and though the High Court had jurisdiction to entertain their writ petitions challenging the service of notice, the assessees should not have been allowed to invoke the extraordinary jurisdiction of the court."

12. In case of A.A. Kochnadi v. Agriculture ITO, 110 ITR 406, their Lordships of Kerala High Court observed as under:

"Where service of a notice on the assessee or his authorized agent or an adult member of his family is not possible, statutes authorize substituted service and such service attributes constructive knowledge of the assessee. To I.T.A. No. 7782/Del/2019 attribute such constructive knowledge, the substituted service must be in accordance with the prescribed procedure, that is, by Section 64 of the Agricultural Income-tax Act, 1950, in this case, which provides that a notice can be served as if it were a summons issued by a court, that is, as provided in Order V Rules 17, 18 and 19 of the Code of Civil Procedure, 1908. In the absence of proof of service as required, in the said Rule 17, such service could not be treated as valid service. A mere statement that service was effected by affixture would not be enough."

13. It is clear from above that constructive knowledge of notice can be attributed to the assessee if service, has been effected as provided by the Statute. All the requirements of substituted service must be shown to be fully satisfied, In the case of Ramendra Nath Ghosh (supra), their Lordships also noted provisions of rule 17 Order V of the Civil Procedure Code and reproduced the same at pages 890/891 of the report. It is seen that the provision requires that names and address of the persons, if any, by whom the house was identified and in whose presence the copy was affixed has to be stated in the report. If above is not done and the officer does not mention in his report nor in his affidavit that he had personally knew the place of the business of the assessee, the substituted service cannot be treated as "valid" and effected in accordance with law. Their Lordships in the decision emphasized that a service without following the procedure as laid down in the rule is not valid Their Lordships added "The possibility of his (processor) having gone to a wrong place cannot be ruled out". Local persons of area where the place (house) of the person to be served is situated are to be associated for two obvious reasons. First, that the place is properly identified. Secondly, such report may not be prepared by the process server and other persons sitting in their office.

14. In the light of clear provisions of law, we are unable to hold that service in this case was effected in accordance with statutory provisions. The report of the Process Server is witnessed by Ms. Indu Rani, the Income-tax Inspector. There is no evidence of any independent person having been associated with identification of place of business of the assessee. There is no evidence that the process server or Ms. Indu Rani had personal knowledge of place of business of the assessee and was, thus, in a position to identify the same. In the absence of above material evidence, notice dated 5.3.2001 cannot be accepted as

served on the assessee in accordance with law. Constructive knowledge of the above notice cannot be attributed to the assessee. In these circumstances, we hold that assessment made Under Section 144 was bad in law. The same is required to be set aside. The AO can issue fresh notice if so authorized under the law. The matter is restored to his file."

8. The principles laid down in the above decision applies to the facts of the assessee's case. In the case on hand there is no any evidence of any independent person having been associated with identification of place of the assessee, local person of area where the place of the assessee to be served is suggested are to be associated to identify the place of the assessee and such report may not be prepared by the process server and other persons sat in their office without involving local person of area. For obvious reasons it is very much necessary that local persons of the area are to be associated in the process of service of notice by affixture. This process of law has not been followed in serving the notice by way of affixture and the decision squarely applied to the assessee's case.

9. The Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Kishan Chand (supra) affirmed the decision of the Tribunal in holding that resort to affixture could not be straight away taken without taking other modes of service. The Hon'ble High Court while holding so, observed as under:-

"2. The assessee is individual and as a sequel to the search and seizure operation was conducted on his premises, he filed revised return. The Assessing Officer framed assessment under section 144 of the Act on the basis of best judgement. The Commissioner of Income Tax (Appeals) accepted the appeal mainly on the ground that the assessee had not been served. Evidence with regard to service by affixture was rejected on the ground that resort to affixture could not be straightaway taken without first taking other modes of service. The Tribunal affirmed the said finding. It was observed:
"From the facts of the case, I find that the search and seizure operations had been taken at the business and residential premises of the appellant as far back as August, 1976, and the income of the assessment year 1969-70 could be assessed by issuing a notice by March 31, 1978. Notice under section 148 was issued on March 23, 1978, and the Income Tax Officer was naturally anxious to see that the notice gets served by March 31, 1978. Though he meticulously complied with all the formalities prescribed with regard to the service of notice through the affixture yet the hurry which he had to make is quite apparent. As pointed out, search had taken place in the year August, 1976, and when no action had been taken up to March 23, 1978 taken recourse to service by affixture can be said only a sheet formality and not the real service as held by their Lordships in different judgements of the different High Courts, referred to above....."

3. Learned counsel for the Revenue is unable to show that there was any refusal of the assessee to accept service as has been assumed in the question referred. On the other hand, the Tribunal has categorically held that no other mode was adopted and steps for service of notice were taken about a week before the time was expiring.

4. In view of the finding of the Tribunal which is not shown to be perverse, the question referred has to be answered against the Revenue and in favour of the assessee. Ordered accordingly."

10. In the case of Wg. Cdr. Sucha Singh Vs. Income Tax Officer in ITA. No. 1605/Del/2012 dated 11th April, 2017 the co-ordinate bench of the Delhi Tribunal held as under:-

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"5.3 Coming to the facts of the case, it is undisputed that the property located at 123, Hargobind Enclave, Delhi was sold by the assessee during assessment year 2008-2009. It is also undisputed that the return of income for assessment year 2009- 2010 was filed by the assessee on 04/09/2009 whereas the notice under section 143 (2) was dated 14/09/2009 and was served by affixture on 24/09/2009 and, thus, the last known address before the issue of service of notice was H - 234, Naraina Vihar, Naraina, New Delhi i.e. the address mentioned in the return of income for assessment year 2009-2010. The remand report of the AO also admits that all the notices under section 143 (2) remained un- served. Thus, the service of the very first notice has, undisputedly, been done by way of affixture whereas order V, rule 12 of CPC provides that wherever it is practicable, service has to be effected on the defendant in person or on his agent. Order V, rule 17 of CPC further provides that the affixture can be done only when the assessee or his agent refuses to sign the acknowledgement or cannot be found. Thus, for resorting to affixture, efforts have to be made to serve the notice upon the assessee and only after reaching a finding that the notice cannot be served upon the assessee, the mode of affixture can be resorted to. Further rule 17 of order V of CPC mandates that an independent local person be the witness of service through affixture and for the purpose of having been associated with the identification of the place. However a perusal of the affixture report shows that there was no independent local person as a witness and there is no evidence that anyone identified the place as belonging to the assessee before such affixture. It is seen that the Income Tax Inspector has signed as the local independent person but such witness cannot be considered to be a local independent person for the purposes of rule 17 of order V of CPC. The Hon'ble Punjab and Haryana High Court in the case of CIT versus Naveen Chander reported in 323 ITR 49 has held that the fixation is required to be done in accordance with the procedure laid down in the Code of Civil Procedure, and where in the report of the inspector/notice server, who claimed to have affixed the notice, there was no evidence of any independent local person having been associated with the identification of the place of business of the assessee, it was a clear violation of the mandate of rule 17 of order V of Code of Civil Procedure, which laid down the procedure to serve notice by affixture. Since there was no valid service of notice, the assessment proceedings were held as invalid. Therefore, in view of the factual matrix of the case, it is our considered opinion that the Department has failed to prove a valid service of notice on the assessee before embarking upon the assessment proceedings. Since the entire reassessment proceedings were based on assumption of jurisdiction through the issue of notice under section 143 (2) of the Act, which was not validly served on the assessee, we hold that the assessing officer was patently wrong in completing the assessment without effecting the service of notice in accordance with section 282 (1) of the Income Tax Act, 1961 read with order V rule 12 and order V rule 17 of the CPC. Therefore, on the facts and circumstances of the case, we have no option but to quash the entire assessment proceedings. Accordingly, we quash the assessment proceedings and allow the appeal of the assessee on the legal issue. In view of our adjudication in favour of the assessee on the legal issue, the other grounds become academic in nature and are not being adjudicated upon."

19. Whatever shortcoming the ld. Counsel has pointed out in context to allegation of non-compliance of rules for substituted service stand un-rebutted and only establish there was invalid mode and manner of service. In fact if this notice was part of the record when transferred to CC-14 New Delhi, in

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pursuance of transfer of further proceedings by virtue of section 127 of the Act, then at time of passing the assessment order it should have been made part of the assessment order to show as to how the jurisdiction was assumed at Delhi on the basis of notice u/s 143(3) of the Act served by JAO at Kollata.

20. In the light of the aforesaid findings, we are of the considered view that the jurisdictional AO has not issued the notice u/s 143(2) of the Act, in the prescribed time and mode. Consequentially all the assessment proceedings are vitiated and make the impugned assessment order a nullity. The ground of assessee is sustained. The appeal of revenue is dismissed.

Order pronounced in the open court on 18.12.2024.

Sd/-	Sd/-
(S. RIFAUR RAHMAN) ACCOUNTANT MEMBER	(ANUBHAV SHARMA) JUDICIAL MEMBER

Dated: 18th December, 2024.

dk

Copy forwarded to:

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

Asstt. Registrar, ITAT, New Delhi