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IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'I' NEW DELHI)

BEFORE SHRI C.L. SETHI, JUDICIAL MEMBER  
AND  
SHRI A.K. GARODIA, ACCOUNTANT MEMBER

I.T.A. No. 3339/Del/2007  
Assessment year : 2003-04

ACIT,  
Circle 22 (1),  
New Delhi

M/s Vision Inc.,  
V. E - 18/ C - 60, Kalkaji,  
New Delhi

(Appellant)

(Respondent)

PAN /GIR/No.AACFB4172A

C. O. No. 115/Del/2008  
Assessment year : 2003-04

M/s Vision Inc.,  
E - 18/ C - 60, Kalkaji,  
New Delhi

ACIT,  
V. Circle 22 (1),  
New Delhi

(Appellant)

(Respondent)

PAN /GIR/No.AACFB4172A

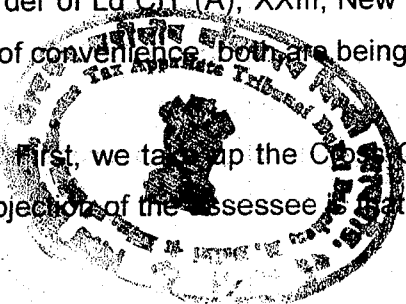
Assessee by : Shri Ved Jain, Ms Rano Jain & Sri V. Mohan.  
Revenue by : Shri M. Mohsin Alam, CIT DR.

ORDER

PER A. K. GARODIA, A. M. :

This is a revenue's appeal and C. O. of the assessee, which are directed against the order of Ld CIT (A), XXIII, New Delhi dated 30.03.2007 for A. Y. 2003 - 04. For the sake of convenience, both are being disposed of by this common order.

2. First, we take up the C.O. Objection filed by the assessee. As per first ground, the objection of the assessee is that in this case, notice u/s 143 (2) was not served upon



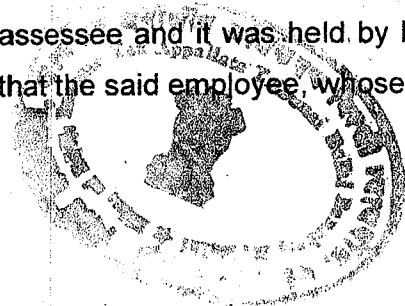
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the assessee within 12 months from the end of the month of filing of return of Income and hence, the assessment order itself is bad and liable to be quashed.

3. It is submitted by the learned AR of the assessee that a copy of Remand Report of the A. O. dated 11.01.2007 is available on page 359 of the Paper Book and from the same, it can be seen that first Notice u/s 143 (2) was issued on 27.12.2004 at the address E – 18, Kalkaji and the same was first sent through the inspector, who reported that no such company exists at this address. He submitted that hence the notice was not served on the assessee. It is submitted that as per the A. O., one more notice was issued on 28.12.2004 and sent through Speed Post but the same was received back unserved from the postal authorities with the remarks that no such company existed at this address. It is submitted that hence this notice was admittedly not served on the assessee. It is further pointed out that as per the assessing officer, another notice dated 30.12.2004 was issued for another address of the assessee i.e. K – 60, Kalkaji and this notice was sent through inspector. It is noted by the A. O. in the said Remand Report that this notice dated 30.12.2004 was served on the person available at this address although Sri Manoj Gupta, Partner was outstation. It is contended that since both the partners of the assessee firm Mr. Manoj Gupta and his wife Shallu Gupta were outstation and hence this notice was also not served on the assessee. It is contended that no name of the person is disclosed, who is said to have received this notice. It is submitted that even if any employee has received this notice, it was never handed over to the partners of the assessee firm and service of notice on an employee, who is not authorized to receive notice is not a valid service and in support of this contention, reliance was placed on the judgment of Hon'ble Delhi High Court rendered in the case of CIT vs. Rajesh Kumar Sharma as reported in 214 CTR 547. Reliance was also placed on the Judgment of the Special Bench of the Tribunal rendered in the case of Kuber Tobacco Products (P) Ltd. vs. DCIT in IT (SS) A No. 261/Del/2001 dated 14.01.2009, (copy furnished) in support of this contention that the provisions of section 292 BB are applicable from Asst. Year 2008 – 09 and is not retrospective. In support of the same contention, reliance was placed on the judgment of Hon'ble Delhi High Court rendered in

the case of CIT vs. Mani Kakar, 18 DTR Judgments 145. Ld. DR of the revenue supported the orders of the authorities below and it was also submitted that it is noted by the A. O. in the assessment order as well as in the said remand report that the notice u/s 143 (2) dated 30.12.2004 was issued and served on the assessee and hence the requirements of section 143 (2) were complied with and therefore, this ground of the assessee should be rejected.

4. We have heard the rival submissions and perused the material available on record and have gone through the orders of the authorities below and the judgments cited by the learned AR of the assessee. We find that it is admitted position that earlier two notices dated 27.12.2004 and 28.12.2004 were not served on the assessee and as per the A. O., the notice dated 30.12.2004 was served on the assessee. The manner of service of this notice dated 30.12.2004 is stated by the A. O. in the remand report dated 11.01.2007. As per the same, it was served on the person, who was available at this address i.e. K - 60, Kalkaji and it is specifically noted by the A. O. himself that Sri Manoj Gupta was not present since he was out of station. Name of the person, on whom this notice is said to be served is not available. There is no mention about the other partner Ms. Shallu Gupta but the claim of the assessee is that both partners were out of station. Had the notice been served on this second partner, it is quite natural that the A. O. would have said so in the remand report instead of saying that the notice was served on the person available at this address and Sri Manoj Gupta was outstation. It is hence apparent that the notice was not served on any partner of the assessee firm. Although, name of the person, on whom the notice was served is not stated by the A. O. in the remand report but still it can be said that at best, the notice was served on some employee of the assessee firm. Now, we have to examine that whether service of notice on an employee is a valid service or not. In this regard, we find that in the case of CIT vs. Rajesh Kumar Sharma (Supra), similar issue was under consideration of Hon'ble Delhi High Court. In that case, notice u/s 148 was said to be served on an employee of the assessee and it was held by Hon'ble Delhi High Court that there is nothing to suggest that the said employee, whose name i.e. 'Lalmani' was available in that case, was in any



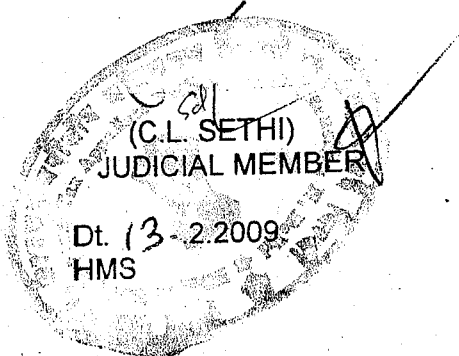
manner authorized to receive any summon on behalf of the assessee and hence it cannot be held that receipt of notice by Lalmani amounted to service of the notice on the assessee. In the present case also, it is not the case of the revenue that the person, on whom the notice was served, was authorized to accept any notice on behalf of the assessee and hence by respectfully following this judgment of Hon'ble Jurisdictional High Court, we hold that in the present case also, there was no valid service of notice u/s 143 (2) on the assessee and hence the assessment order passed by the A. O. is invalid and is liable to be quashed. We order accordingly.

5. Before parting, we would like to mention that in view of the decisions of the Special Bench of The tribunal and also of Hon'ble Delhi Court as noted above, section 292BB is not applicable in the present case as the assessment year involved in the present case is 2003 – 04 and this section was inserted w.e.f. 01.04.2008 and hence applicable from A. Y. 2008 – 09. Hence, inspite of the fact that the assessee participated in course of assessment proceedings, the objection of the assessee is valid. Ground No. 1 of the assessee's C. O. is allowed.

6. In view of our decision regarding Ground No. 1 of the assessee's C. O., other grounds raised by the assessee in the C. O. and in the revenue,s appeal do not call for any adjudication.

7. In the result, the C. O. of the assessee is partly allowed and the appeal of the revenue stands dismissed.

8. Order pronounced in the open court on <sup>13/11</sup> February, 2009.



  
(A.K. GARODIA)  
ACCOUNTANT MEMBER

Copy forwarded to:-

1. The appellant
- ✓ 2. The respondent *By Hand*
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknaya Bhawan, Khan Market, New Delhi.

True copy.

By Order



(ITAT, New Delhi).  
~~सहायक रजिस्ट्रार~~  
Assistant Registrar  
आयकर अपीलिय अधिकरण  
Income Tax Appellate Tribunal  
दिल्ली, नई दिल्ली  
Delhi, New Delhi

