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IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH-D, NEW DELHI

BEFORE SHRI D.R. SINGH, JUDICIAL MEMBER AND
SHRI R.C. SHARMA, ACCOUNTANT MEMBER

I.T.A.No.4436/Del/2009
Assessment year 2001-02

Dr.(Mrs.) K.B. Kumar,
B-23, Anand Vihar,
Delhi.

Vs.

Income-tax Officer,
Ward-34 (2),
New Delhi.

(Appellant)

(Respondent)

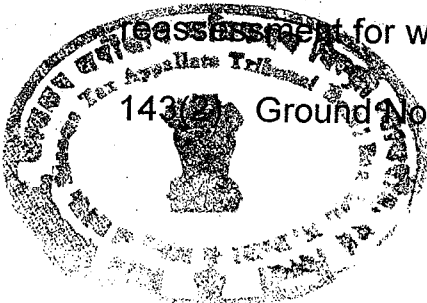
Appellant by : Shri Ved Jain and Smt. Rano Jain, CAs.
Respondent by : Shri B.K. Gupta, Sr. D.R.

ORDER

Per D.R. Singh, JM:

Assessee has filed this appeal against the order of the Id. CIT(A)-XXVII, New Delhi dated 9.09.2009 passed in Appeal No.166/08-09 for assessment year 2001-02, on as many as five grounds.

2. Ground No.1 is general in nature. Ground No.2 relates to the legal issue whether reopening of assessment u/s 148 r/w section 147 is bad in law being without jurisdiction and so the reassessment order is liable to be quashed. Ground No.3 is again a legal issue relating to validity of assessment for want of valid service of notice upon the assessee issued u/s 143(2). Ground No.4 is on merit relating an addition of Rs.5 lacs made by the



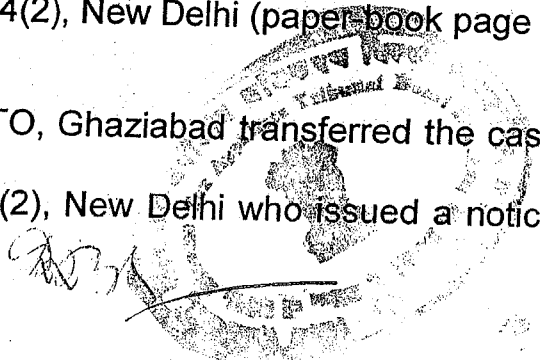
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Assessing Officer and sustained by the Id. CIT(A) on account of gift received by the assessee.

3. Before us, the Id. AR for the assessee submitted that this appeal may be disposed of on the legal issue whether reopening of assessment u/s 148 r/w section 148 is without jurisdiction and so the reassessment framed by the Assessing Officer is liable to be quashed.

4. Briefly stated, the relevant and undisputed facts relating to this issue involved in ground No.2 of the appeal of the assessee are that ITO, Ward-21(3), Ghaziabad, based on information received by him from Additional Commissioner, Range-I, Ghaziabad regarding receipt of Rs.5 lacs on 19.2.2000 from Sanjay Mohan Aggarwal recorded reasons of income escaping assessment on 25.3.2008 and issued notice u/s 148 on 27.3.2008. The assessee vide her letter dated 20.11.2008 submitted to ITO, Ghaziabad that she had filed her income tax return for assessment year 2001-02 on 3.9.2001 declaring income of Rs.4,61,330 with ITO, Range-48, New Delhi and hence this notice issued by ITO, Ghaziabad was without jurisdiction (refer to pages 1, 2, 5 & 6 of the paper-book). Thereafter, on the asking of the ITO, Ghaziabad, the assessee vide letter dated 6.12.2008 submitted a copy of income tax return for assessment year 2007-08 along with acknowledgement receipt of Assessing Officer, Ward-34(2), New Delhi (paper-book page 20).

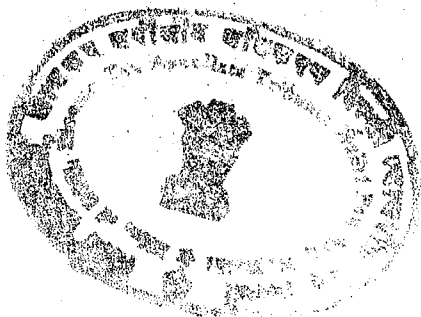
4.1 Further, it appears that the ITO, Ghaziabad transferred the case to the office of Assessing Officer, Ward-34(2), New Delhi who issued a notice dated



16.12.2008 to the assessee u/s 143(2) for appearance before him on 23.12.2008 (see paper book page 22).

4.2 In response to the said notice the assessee submitted her reply dated 23.12.2008, placed at page 23 of the paper-book, mentioning therein that the proceedings u/s 148 had become time-barred and was illegal and proceedings deserved to be filed. However, the assessee received a letter dated 23.12.2008 from the ITO, New Delhi assessing income of the assessee at a sum of Rs.9,61,380 by adding the gifted amount of Rs.5 lacs and on appeal the same was confirmed by the Id. CIT(A).

5. The Id. AR for the assessee contended before us that the re-assessment order passed by the ITO, Ward-34, New Delhi was without jurisdiction and liable to be quashed because he has simply framed the reassessment by issuing a notice u/s 143(2) on 16.12.2008 without recording any reasons and without issuing a fresh notice u/s 148 of the Act. He further submitted that now the issue, i.e. whether in the absence of any valid recording of reasons by the Assessing Officer having jurisdiction and without issuing notice u/s 148 the order passed by the Assessing Officer was without jurisdiction and liable to be quashed, stands covered in favour of assessee and against the revenue. In support of his contentions, the Id. A.R. for the assessee relied on the following decisions:-



(I) **ITO vs. Krishan Kumar Gupta, (2008) 16 DTR(Del)(Trib) 1,** wherein the ITAT, Delhi Bench-E held reassessment completed by an ITO on the basis of notice u/s 148 issued by another ITO who had no jurisdiction over the assessee is not valid. Reassessment was also held to be invalid for the reason that the jurisdiction over assessee's case was not transferred by any order passed u/s 127 by any competent authority to the ITO who passed the impugned assessment order.

(ii) **Ranjeet Singh vs. ACIT, (2009) 120 TTJ (Del) 517; (2008) 10 DTR 181:-**

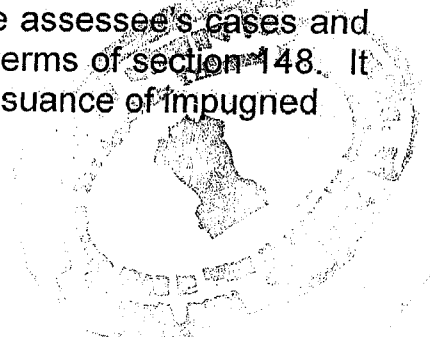
wherein the Tribunal held that notice u/s 148 issued by the ITO at Ghaziabad to the assessee who was assessed to tax in Delhi was without jurisdiction and, therefore, assessment framed on the basis of said notice is bad in law; impugned notice was not in substance and effect in conformity with the provisions of section 120 r/w section 147 and thus, the provisions of section 292B are not applicable.

(iii) **CIT vs. Smt. Anjali Dua, (2008) CTR(Del) 183; (2008) 174 Taxman 72: (2008) 11 DTR 93:**

wherein their Lordships of Delhi High Court dismissing the appeal of the revenue held as under:-

The Tribunal noted that the request of the assessee to transfer the jurisdiction was noted in the letter dated 25th March, 1998, whereby the no objection of CIT, New Delhi, was conveyed to the CIT, Ludhiana. It is also noted that thereafter the assessee submitted returns for the assessment years 1997-98 onwards at New Delhi. It is in these facts and circumstances that the tribunal came to the conclusion that insofar as, the assessee was concerned, after the said transfer, it is only Revenue authorities at New Delhi who had jurisdiction over the assessee's cases and who were competent to issue a notice in terms of section 148. It may also be pointed that pursuant to the issuance of impugned

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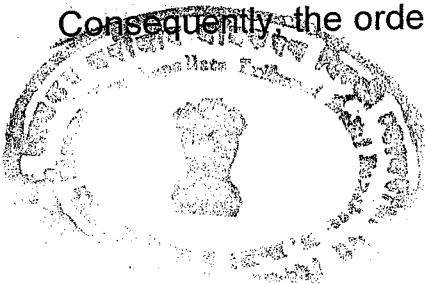
notice under section 148 on 28th March, 2003, when the notice under section 142(1) was issued to the assessee in December, 2003, the assessee by her reply dated 21st Jan., 2004 indicated that her Assessing Officer was not located in Ludhiana, but was at New Delhi. The Tribunal has come to the conclusion on the basis of the facts available on the record and, no substantial question of law arises in the present case. No interference with the impugned order is called for. The appeal is dismissed.

5.1 Thus, according to the learned AR for the assessee, since the legal issue involved in ground No.2 of the appeal of the assessee now stands covered in favour of the assessee and against the revenue in view of the decisions (supra), the order of the Id. CIT(A) on this legal issue is required to be set aside and assessment framed by the Assessing Officer is to be declared invalid and liable to be quashed.

6. The Id. D.R. for the Revenue, on the other hand, except placing reliance on the orders of tax authorities below was neither able to controvert the submissions of the assessee nor could place on record any case law in which a view contrary to the decisions (supra) has been taken.

7. In this view of the matter and respectfully following the decisions (supra), it is held that notice u/s 148 issued by ITO, Ghaziabad was without jurisdiction and consequent upon the same reassessment framed by the Assessing Officer, Delhi is invalid and the same is accordingly quashed.

Consequently, the order of the Id. CIT(A) is set aside on the legal issue raised



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by the assessee in her appeal. Ground of No.2 raising the legal issue is decided in favour of the assessee.

8. In view of our finding recorded hereinabove, we do not consider it necessary to consider the other grounds of appeal of the assessee as they are simply academic.

9. In the result, the appeal filed by the assessee is allowed in terms stated above.

Order pronounced in the open court on 20.1.2010 immediately after conclusion of the hearing.

(R.C. SHARMA)
ACCOUNTANT MEMEBR

(D.R. SINGH)
JUDICIAL MEMBER

"vsk"

Copy to:

1. Appellant-assessee *By hand*
2. Respondent-revenue
3. CIT(A)
4. CIT
5. ITO
6. DR, ITAT, New Delhi

उपस्थित न्यायाधीश
Assistant Registrar
Assistant Registrar
भाषक अथवा अधिकाधिक

Income Tax Appellate Tribunal
दिल्ली पीठ, नई दिल्ली
Delhi Bench, New Delhi