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AO was required to access address of assessee mentioned in last ITR; reassessment notice on old address not valid

Summary – The High Court of Delhi in a recent case of Veena Devi Karnani, (the Assessee) held that In terms of Rule 127, when Assessing Officer issues reassessment notice, he is under a duty to access available PAN data base of addressee or address available in last income return filed by addressee

Facts

- For relevant assessment year, assessee filed her return and assessment was completed under section 144.
- Subsequently, the assessee shifted her residence in assessment year 2011-12 and filed return in Form ITR-V disclosing the charged address. The said position continued in succeeding assessment years.
- Subsequently, the Assessing Officer taking a view that material information was not disclosed in assessment year in question and thus reassessment was necessary, issued notice under section 148 at old address of assessee.
- Since assessee could not respond because notice was sent to old address, an *ex parte* assessment order was passed under section 144, read with section 147.
- The assessee thus filed instant petition contending that entire reassessment proceedings were a nullity because the notice was never served upon her and rather the Assessing Officer instead of proceeding to comply with the provisions with respect of the notice (*i.e*. Rule 127 by examining the PAN Data base or the subsequent year returns to ascertain the correct address merely dugout the old address and proceeded to complete the assessment.

Held

- Rule 127(2) clearly states that the addresses to which a notice or summons or requisition or order or any other communication may be delivered or transmitted shall be either available in the PAN database of the assessee or the address available in the income tax return to which the communication relates or the address available in the last income tax return filed by the assessee - all these options have to be resorted to by the concerned authority - in this case the Assessing Officer. Therefore, in the facts of this case when the Assessing Officer issued the reassessment notice, he was under a duty to access the available PAN database of the addressee or the address available in the income tax return to which the communication related or the address available in the last income return filed by the addressee. The returns for assessment years 2011-12 and 2012-13 had already been filed on 22-2-2012 and 13-12-2012 respectively, reflecting the changed address but with the same PAN and before the same Assessing Officer. The Assessing Officer omitted to

access the changed PAN database and going by the explanation of the revenue, he merely mechanically sent notices at the old address. Even after issuing the reassessment notice, all succeeding notice under section 142(1), were sent to the old address. It was in these circumstances that the reassessment was completed on best judgment basis.

- The Privy Council in *Nazir Ahmed* v. *King Emperor* [1936] 38 BOM LR 987 held that where the law mandates doing something in a particular manner, that is the only manner permissible in law and no other mode can be considered legal. Therefore, the Assessing Officer was circumscribed and bound by the express mandate of rule 127 which is clearly addressed to the authorities of the revenue *vis-à-vis* the mode of communication. Given these compulsions, the revenue's argument is a desperate 'fall back' of the last resort *i.e.* the notice which was never under section 292-B of the Act is one of despair. It amounts to saying that a notice which was never sent or received is deemed to have been sent and all proceedings despite such lack of notice and despite the revenue's fragrant violation of law are deemed to be justified. In such circumstances, the argument, *i.e.* the revenue's invocation of section 292-B only needs to be noticed in order to be rejected as countenancing it, would mean that all illegalities are deemed to be tapered over, in its favour. Section 292-B would admit that no controversy with respect to the question of notice or proper service of summons, if at all were issued in the proper manner, known to law. Here clearly that is not the case.
- The narrative of facts and the behaviour of the Assessing Officer in this case is disturbing to say the least. The Assessing Officer appears to have completely and mechanically proceeded on the information supplied to him by the bank without caring to address himself to the correct position in law and deduced to ensure that the reassessment notice (which is a matter of moment as far as the assessee is concerned) was issued properly and served at the correct address in the manner known to law. The assessee has relied upon a screenshot of the PAN database at the stage when the petition was filed to say that the revenue always had the wherewithal to access the correct address, PAN number and all other relevant details including the email ID as well as the bank account. The omissions of the Assessing Officer deserves, therefore, to be not only adversely noticed but appropriately reflected in his or her confidential reports and appropriate proceedings initiated by the Revenue authorities, which is so directed.
- Subject to the above observations, the writ petition is allowed, the impugned reassessment notice as well as the order under section 144/148, and the consequential action *i.e.* attachment of the assessee's accounts are hereby quashed.