No reassessment if AO failed to prove that notice was served upon assessee: ITAT

Summary – The Delhi ITAT in a recent case of Shri Rathi Steel Ltd., (the Assessee) held that where revenue had failed to prove that notice under section 148 was served upon assessee, which is mandatory in nature, reassessment order passed making additions to income of assessee on account of receipt of share capital from entity alleged to be operated by accommodation entry provider was to be set aside

Facts

- The assessee-company had accepted the share application money of Rs.9.50 lakhs from company MKM. The assessment of the assessee was reopened by issuing notice under section 148 on ground that MKM was operated by accomodation entry provider. The Assessing Officer in the absence of any evidence on record, made the addition of Rs.9.50 lakhs on account of unexplained cash credit.
- The assessee filed the appeal before the Commissioner (Appeals) raising several grounds of appeal challenging the addition on merit of Rs.9.50 lakhs as well as challenging the reassessment order on the ground that no notice under section 148 was served on assessee within the time limit prescribed under section 149. The assessee was only informed of sending of the notice under section 148. It was contended that service of the notice under section 148 was mandatory for initiating the proceedings under section 147. Since no notice under section 148 was served upon the assessee, reassessment order was illegal and bad in Law. The Commissioner (Appeals) noted that as per section 149 notice must be issued within 6 years from the end of the relevant assessment year. In this case such notice was issued by the Assessing Officer on 23-3-2009 and was sent by speed post at the address available on record. The notice was never returned back. Therefore, such notice must be served upon the assessee. This ground of appeal of assessee was accordingly rejected. The addition on merit was also confirmed.
- On the assessee's appeal to the Tribunal:

Held

- In the present case, the revenue was directed to produce the assessment record for perusal of the Bench. Sufficient opportunity was given to the department to produce the reassessment record. However, on the date fixed for hearing, the revenue failed to produce the reassessment record for perusal of the Bench. According to section 148(1) it is provided "before making the assessment, reassessment or re-computation under section 147, the Assessing Officer shall serve on the assessee, a notice requiring him to furnish within such period as may be specified in the notice, a return of his income or the income of any other person, in respect of which he is assessable under this Act….". Section 149(1)(*b*), provides that "no notice under section 148 shall be issued for relevant assessment year if four years but not more than six years, have elapsed from the end of the relevant

assessment year, unless the income chargeable to tax has escaped assessment amounts to are likely to, amount of One Lakh rupees are more for that year". Section 292BB have been inserted into the Act with effect from 1-4-2008.

- It is well settled law that substantive provisions are prospective in nature. Section 292BB is prospective in nature, therefore, this section would not apply to assessment year under appeal. Further, the assessee at the re-assessment stage has raised the objection before the Assessing Officer that no notice under section 148 have been served upon the assessee and that the said notice has become time barred, therefore, the assessee has raised the objection at the first instance before the Assessing Officer about service of the notice under section 148. The assessee referred to order sheet which clearly points out that the Assessing Officer while going through the assessment proceedings for the assessment year 2007-08 has asked the assessee to appear in assessment year under appeal *i.e.,* 2002-03. The Assessing Officer was informed that no notice under section 148 have been served upon the assessee. In assessment year 2007-08, the assessee filed the return of income giving the correct address. Same address have been mentioned by the Assessing Officer in the assessment orders for the assessment years 2005-06 and 2006-07 under section 143(3) which were passed before issuing of the notice under section 148. Therefore, it was, within the knowledge of the Assessing Officer that assessee is not available at address on which it had sent reopening notice under section 148. Therefore, there was no reason to prepare the notice under section 148 on that address. No assessment record has been produced to show if the notice under section 148 have even issued to the assessee through registered post. Copy of the Office record of the Assessing Officer is filed with regard to speed-post but no postal receipt have been produced to show even if the notice under section 148 have been issued through speed-post at the correct address of the assessee. Therefore, in the absence of production of assessment record, nothing is proved if any notice under section 148 have been issued to the assessee. Considering the totality of the facts and circumstances, it is clear that no notice under section 148 have been served upon the assessee for completion of the assessment. Therefore, the jurisdictional pre-condition, is not satisfied for finalizing the reassessment order. Considering the above discussion, revenue has failed to prove that notice under section 148 have been served open the assessee which is mandatory in nature. Therefore, reassessment order cannot be sustained in law. Accordingly, the orders of the authorities below are set aside and the re-assessment order is quashed.