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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 12.10.2023+ **ITA 286/2022****THE PR. COMMISSIONER OF INCOME TAX - 15..... Appellant****Through: Mr Aseem Chawla, Sr. Standing
Counsel with Ms Pratishtha
Chaudhary and Mr Aditya Gupta,
Advocates.**

versus

MADHU GUPTA**..... Respondent****Through: Mr Ruchesh Sinha, Advocate.****CORAM:****HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MR JUSTICE GIRISH KATHPALIA****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J.: (ORAL)**

1. The co-ordinate bench had heard the above-captioned appeal at some length on 10.03.2023. After hearing the counsel for the parties, the co-ordinate bench had etched out the broad contours of the case. For convenience, the relevant parts of the order dated 10.03.2023 are extracted hereafter:

"1. This appeal is directed against the order dated 21.08.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"] concerning Assessment Year (AY) 2007-08.

2. The short point which arose for consideration before the Tribunal was as to whether the finding returned by the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"], that the notice under Section 148 of the Income Tax Act, 1961 [in short, "the Act"] had not been served on the correct address of the respondent/assessee, was correct.

3. The Tribunal, via the impugned order, noted that the CIT(A) had called



for the remand report and had also examined the record available with the Assessing Officer (AO) before concluding that the notice issued under Section 148 of the Act dated 25.03.2013 had been served at the wrong address.

4. To be noted, the notice dated 25.03.2013 was served on the following address: 501, Hawa Singh Block, Asiad Games Village, New Delhi, 110049 [hereinafter referred to as "501 Hawa Singh Block"]. The record shows that this notice was returned with an endorsement by the Notice Server that the person concerned had sold the house three years ago.

4.1 Despite this endorsement, admittedly, the AO passed the assessment order on 20.03.2014 under Section 148/144 of the Act. The record shows that consistently between 2007-08, which is the concerned AY, and 2013-14, the respondent/assessee has been showing her address in the ITRs as Flat No. 100, Milan Apartment, West Enclave, Pitampura, Delhi [hereinafter referred to as "100 Pitampura"]. Concededly, the respondent/assessee's return was available with the AO. Curiously, even in the face of this undisputed fact, the question of law proposed by the appellant/revenue in the instant appeal is suggestive of the fact that the return filed by the assessee was not available with the AO.

5. We may note that via communication dated 22.08.2014, the AO had written to the IT Investigation Wing to provide further information because the respondent/assessee was not available. This communication is revealing, as the AO asserts that reassessment proceedings were initiated upon receipt of information from the Investigation Wing via communication dated 07.05.2012. The communication is also suggestive of the fact that efforts were being made at this juncture to trace the address and PAN of the respondent/assessee to recover the outstanding demand.

6. Mr Ruchir Bhatia, Senior Standing Counsel, who appears on behalf of the appellant/revenue, says that since the address in the PAN data base had not been changed by the respondent/assessee, the notice issued under Section 148 of the Act was valid in the eyes of law.

6.1 In support of his submission, Mr Bhatia has relied upon the judgment of the Supreme Court rendered in *Principal Commissioner of Income Tax, Mumbai v. I-Ven Interactive Limited*, Mumbai 2019 110 Taxman.com 332 (SC). We may note that this was a case where the assessee, despite being served on the old address, had continued to participate in the proceedings, and therefore, the Court observed that merely because the new address had been set out in the ITR, would not render the proceedings inefficacious.

7. As noted above, the facts in the instant case are somewhat different. Not only did the respondent/assessee's ITR from 2007-08 to 2013-14 continue to show her 100 Pitampura address, but also the AO was made aware of the fact, albeit, before the assessment order was passed, that the respondent/assessee was not available at the 501 Hawa Singh Block address.



7.1 Furthermore, we also find that in this case, the appellant/revenue, prima facie, did not lay the foundation for the arguments that are sought to be raised before us, which is, that in the PAN data base, the respondent/assessee's address continued to be shown as 501 Hawa Singh Block.

8. Since Mr Bhatia seeks short accommodation to place before us the record that was made available to the Tribunal, the appeal is stood over.

8.1 Mr Bhatia will place the relevant record before us and also serve the copy of the same on Mr Ruchesh Sinha, learned counsel who appears on behalf of the respondent/assessee.

9. List the matter on 13.04.2023."

2. On 13.04.2023, the counsel for the appellant/revenue had sought further time to place before the court the record that was made available to the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. It was on this plea that the matter was not closed on 10.3.2023.
4. The appellant/revenue has not filed the record that was made available to the Tribunal.
5. According to us, insofar as the facts recorded by the Commissioner of Income Tax (Appeals) [CIT(A)] and the Tribunal insofar as the service of the notice on the respondent/assessee is concerned, are not in dispute.
6. As noted on 10.03.2023, the respondent/assessee was not served with a notice under Section 148 of the Income Tax Act, 1961 [in short, "the Act"].
7. The assessment order was passed by the Assessing Officer (AO) despite being made aware of the fact that the respondent/assessee had not been served with a notice under Section 148 of the Act.
8. The reassessment proceedings can be triggered only when a notice under Section 148 has been issued and served on the concerned assessee. This is a finding of fact. Both the CIT(A) as well as the Tribunal have come to a definitive conclusion that the service of notice under Section 148 was



not effected on the respondent/assessee.

9. Therefore, according to us, no interference is called for with the impugned order dated 21.08.2020 passed by the Tribunal.

10. The Tribunal has returned, as indicated above, a finding of fact. Thus, no substantial question of law arises for our consideration.

11. The appeal is accordingly closed.

12. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 12, 2023 / tr