**MR. SATYENDRA PRATAP SINGH**

**PAN: BZTPS0471A**

**Statements of Facts before the Honorable Commissioner of Income Tax (Appeals)**

**Against Assessment Order passed u/s. 147 r.w. s 144 of the Income Tax Act,1961**

**For AY 2019-20**

The appellant is an individual working during the year under considerations with xxxxxx and received a salary of Rs. Xxxxxx. However, the salary income is a very nominal amount. The appellant works as a Captain/ Head Waiter in the hotel and receives Tips based in his bar tending skills which is earned as a business income by the appellant. Gross receipts from the same during the year under consideration amounted to Rsxxxxxxx

Since the appellant is a Captain/ Head Waiter, he received tips on behalf of all his staff/team and subsequently, the appellant distributes the tips among all based on their skills and performance. The appellant is uneducated and does not maintain any record for these transactions. However, since such gross receipts are less than Rs. 1 Cr (check limit of AY 19-20), he is nevertheless, not liable to maintain books of accounts and shows the income under section 44AD – 8% of gross receipts.

During the year under consideration, the appellant could not file his return of income due to xxxxx. and later on Appellant not able to filed his income tax Return due to time barred limitation.

A search action under Section 132 of the I.T Act, 1961 was conducted on 08.12.2021 on the Group cases of M/s Rare Asset Reconstruction Ltd., M/s Renaissance Fiscal Services Pvt. Ltd., Shri Anil Kumar Bhandari and other related concerns.

The appellant was also covered during the search action and the same took place at his place of residence - ROOM NO 1360/5 , SAMRAT COLONY , NAGINDAS PADA , NALASOPARA EAST , THANE , 19-Maharashtra , 91-INDIA , 401209.

The appellant’s case was being handled by Mumbai Circle Department, which was subsequently transferred to the Ahmedabad circle.

The appellant was alleged to have been a part of Money Laundering transactions with the group however, the same was never proved by the department. There has neither been any recovery, nor any findings on this point. Further neither has the department taken any action on this point, nor is the assessment order based in those allegations.

Based on the same, Assessment for 4 years i.e. AY 2019-20, AY 2020-21, AY 2021-22 and AY 2022-23 in the appellant’s case was opened. Various notices u/s 148, 142(1), SCNs, including the Final Assessment Order were allegedly served on the appellant on his hometown address RAJAPUR AIRPOT,PRITHVI GANJ, PRATAPGARH, PRATAPGARH 230002, Uttar Pradesh, India to which the appellant does not have access to anymore. Further, the email is also being of TRP was also not accessible to the appellant and the TRP did not inform the appellant of any such notice.

Subsequently, based on the above, the appellant was unable to respond to any notice and an ex-parte order dated 18.02.2024 was passed u/s 147 r.w.s. 144. It was only when the appellant opened the IT website for xxxxx he found out about such order being passed in his case. Subsequently, he engaged us to file an appeal for his case and authorised us to make representation to the relevant authorities.

Based on the above facts, we would like to appeal against the said Assessment Order on the following grounds which are without prejudice to each other:

1. **Non-Receipt of Notice:**

As stated above, the appellant is an uneducated individual working in a hotel as a captain and is not aware about the tax laws of the country. His return of income was being filed by a TRP and the due to reasons as explained above, the appellant could not file is return of income for AY 2019-20.

Subsequently, a search was conducted at the appellants premises at ROOM NO 1360/5 , SAMRAT COLONY , NAGINDAS PADA , NALASOPARA EAST , THANE , 19-Maharashtra , 91-INDIA , 401209. During the search proceedings, the appellant had provided his latest contact details to the officers who conducted the search. Moreover, this updated address is also available in the appellant’s return of income for AY 2017-18.

Subsequently, in 2023, the appellant was served a notice u/s 148 on the new address however, the same had a date bearing 2022 which was thus ignored by the appellant thinking that an old notice might have been mistakenly delivered to him. He was under a bonafide belief that since he had given all statements and there was no finding during the search, the notice, being old dated, had no importance.

It was later on during xxxx understood that there was a mistake in the notice and a corrigendum has been given to rectify the same. However, this was not served to the appellant on his new address. All the subsequent notices and orders passed have been addressed to the appellant’s home town address which is visible from the notices and orders later downloaded from the IT E-filing portal.

It is pertinent to note that despite the above information being available with the department, the department did not issue any notice to his present place of residence. The fact that the search was conducted at the Thane residence itself means that the department is aware of the appellant’s place of residence and for reasons beyond our understanding, issued all notices u/s 142(1), SCNs, including the Final Order to the old address.

The appellant places reliance on the following judicial pronouncements:

* **Usha Stud & Agricultural Farms (P) Ltd Vs DCIT [ITA Nos.910 to 912/Del/2010] [[2015] 55 taxmann.com 332 (Delhi - Trib.)]**

It cannot be gainsaid that the provisions of the CPC, in keeping with those of Section 282 of the IT Act, as relevant herein, are not a mere formality. Fulfillment of the requirements therein is the sine qua non for a proper and valid service of notice.

Further, in this case the department was aware of the change in address of the appellant and thus, notice was not served on the new address and thus there was no valid service of notice u/s 148 of the Act on the assessee and that the re-assessment proceedings were void ab initio.

* **Paparruna Rao v. Revenue Divisional Officer [AIR 1918 Mad 589]**

A Division Bench of the Madras High Court while dealing with the manner of service contemplated by section 45(2) of the Land Acquisition Act, which also attracts the provisions of the Code of Civil Procedure, in the matter of service of notices, expressed the view that unless a person is appointed as agent or accept service of processes by an instrument in writing signed by the principal, the service on him cannot be said to be valid. The view taken in that case was that an oral authority is not sufficient but there should be a written authority.

Similar view has been taken in CIT v. Dey Brothers [1934] 3 ITR 213 (Rangoon).

* **CIT v. Baxiram Rodmal [[1934] 2 ITR 438 (Nag)**]

It has been held that the mere fact that a person had accepted notices on behalf of the assessee on previous occasions and appeared for the assessee would not constitute him an agent on whom a notice or requisition under the Act would be validly served nor would any statement made by him bind the assessee.

* **C. N. Nataraj v. Fifth ITO [[1965] 56 ITR 250 (Mysore)**]

The Mysore High Court took the view that the service of notice under section 148 on a clerk of the assessee's father who was neither an agent of the assessee nor authorised by him to accept notices on his behalf was not valid and, therefore, the assessee would not be assessed under section 147 in pursuance of such service of notice.

* **Brijinderpal Singh Bhullar v. ITO [2022] 139 taxmann.com 210 (Amritsar - Trib.)**

Where Assessing Officer despite being in knowledge of fact that assessee had shifted and was residing abroad, having taken recourse to substituted service of notice under section 148, i.e., by getting same affixed at his old residential house in India, which residential house Assessing Officer had himself observed in assessment order was sold by assessee prior to his shifting abroad, it was not a valid service of notice and thus, Assessing Officer having framed impugned assessment without effecting a valid service of notice under section 148, it was liable to be vacated.

Thus, in order that there should be a valid service, the person on whom service is effected must have valid authorization given to him in writing to receive such notice and mere implied authority will not be enough. Alternatively, if for argument’s sake, it is to be held that implied authority is sufficient for service of notice, then that too is not present in the present case.

Thus, based on the above, we can say that the appellant was not served a notice u/s 148 on the new address which was available with the department and thus, the impugned order, based on the above-mentioned judgements is void ab initio and deserves to be quashed.

1. **Approval Note of PR CIT not provided**

The appellant was served a notice u/s 148 dated 05.01.2022 (later changed to 05.01.2023 by corrigendum which was not given to the appellant) did not contain any approval note of the Pr. CIT as stated in the notice.

Further, upon scrutiny of all the notices served by the department online, no such approval note was found.

1. **No addition u/s 69A in AY 21-22**

As stated earlier, 4 years of the appellant have been selected for scrutiny. From the same, The assessment for AY 2021-22 has been carried out by the ld. AO u/s 143(2) r.w.s 144 via order dated 27.12.2022.

The facts and circumstances of the case are exactly same in each assessment year which has been re-opened. In the above-mentioned order for AY 2021-22, on exact same facts, the ld. AO has not made any additions under section 69A in the appellant’s case. A few disallowances have been made on account of not being able to respond to the notices due to reasons as stated in ground 1.

It is also pertinent to note that the ld. AO for AY 2021-22 is also at the level of ACIT and the ld. AO for AY 2019-20 (year under consideration) is also at the ACIT level. Thus, one cannot argue that the subsequent assessment has been made by a senior officer. Two different treatments of income of the appellant on the same issue and same facts does not go well in the eyes of law. Further, the order has been passed after the prior approval of Addl. CIT as stated in the order.

Therefore, based on the same, we pray before your honour that the assessment made by the ld. AO for the current year is not in line with previous assessment done by the ld. AO in same case in AY 2021-22 and thus, lacks merit.

1. **Unexplained Money**

As explained in our ground 1, the appellant did not receive any notice and thus, was unable to make any submissions with the ld. AO. It is pertinent to note that there has been no willful default on the part of the appellant to not comply with the proceedings.

Due to the same, the ld. AO has treated the all the credits entries in the 5 bank accounts of the appellant as unexplained money and added the same, i.e. Rs.25,76,615/- to the appellants income as unexplained money u/s 69A.

We hereby state that the same is not unexplained money. As stated initially, the appellant receives tip incomes which he has to distribute among the staff. The appellant being and uneducated person, does not maintain any record of the same. Further, as per the provisions of section 44AB, the appellant is not liable to maintain any books of accounts. Thus, for the same, the appellant wishes to take the benefit of Section 44AD of presumptive taxation and provide 8% of the gross receipts as profits.

The computation of income of the appellant is as under:

Therefore, without prejudice to our ground 1, in light of the above, we pray before your honour to assess the income of the appellant as above and oblige.

**X**

**MR. SATYENDRA PRATAP SINGH**

**PAN: BZTPS0471A**

**Grounds of Appeal before The Honourable Commissioner of Income-tax (Appeals)**

**Against Assessment Order passed u/s. 147 r.w. s 144 of the Income Tax Act,1961**

**For AY 2019-20**

The grounds mentioned hereunder are without prejudice to one another:

* + - 1. On the facts and circumstances of the case, the learned Assessing Officer erred in making Addition of Rs 50,67,461/-being Salary Income Earned as Unexplained Income and Making additions U.s 69A without appreciating that on the very same Salary income TDS was deducted by Employer and was reflecting in 26AS and also in the Tax department Online Records.
      2. On the facts and circumstances of the case, the learned Assessing Officer erred in making additions without Serving a proper notice to the Assessee for non Filling of return and reopening. As assessee was never Served with any notice or Show cause in past physically or through Email. It is only after passing the Assessment order Tax Demand has been intimated by Assessing officer telephonically to the Assessee.
      3. The Assessee was under bonafides understanding that He receives His Salary Income After Deduction of TDS by his Employers hence there is no further additional requirement of Filling Returns as he was a salaried Employee.
      4. The learned Assessing officer has not given credit for the TDS Deducted on the salary Income Earned by the Appellant

The Appellant craves the leave to add, amend, alter and/or delete any of the above grounds of appeal at/or before the time of hearing.

**X**