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

Date of Decision: 31.10.2018

+ **W.P.(C)No.11739/2018 & CM Nos.45456-57/2018**

JINDAL METAL CO. Petitioner
Through : Mr. Rajesh Jain, Mr. Girish K.
Shukla, Mr. A.K. Jain and Ms.
Aastha Gandhi, Advs.

versus

PRINCIPAL COMMISSIONER OF
INCOME TAX, DELHI-21 Respondent
Through : Mr. Zoheb Hossain, Sr.
Standing Counsel for Revenue
and Mr. Deepak Anand, Jr.
Standing Counsel for Revenue.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

S. RAVINDRA BHAT, J.(ORAL)

1. The writ petitioner challenges a revisional order dated 22.05.2017 of the Commissioner of Income Tax ("CIT" hereafter) which upheld the reassessment order of the Assessment Officer (AO) made for the assessment year (AY) 2008-09.
2. The petitioner, an individual tax payer, claims to reside at C-309, Vikas Puri, New Delhi-110018. From the said address, he submits that he has been filing his income tax returns since 1996 onwards in accordance with Section 124(1)(b) of the Act. This address falls within the jurisdiction

of Income Tax Officer Ward - 26(4) from where he was issued notice dated 28.02.2003 under Section 271F for AY 2000-01 followed by the penalty order dated 12.03.2003. It is not in dispute that on 09.05.1999, he opened a proprietorship concern by the name of Jindal Metal Co. at 5870/37, First Floor, Basti Harphool Singh, Sadar Bazaar, Delhi-110006 which was registered with the sales tax department at Delhi. The Petitioner filed his income tax return for the AY 2008-09 with ward 26(4) against PAN No.AEEPJ7166A on 29.09.2008. Along with the return, he filed an audit report in Form 3CB as required under Section 44AB of the Act fully disclosing all the details relating to sale/purchase, expenses, etc. On 26.04.2010, search and seizure under Section 132 of the Act was carried out of M/s Rakesh Gupta, Vishesh Gupta, Navneet Jain & Vaibhav Jain (hereafter "Rakesh Gupta & Ors."). The search assessments in accordance with provisions of the Act (Section 153A etc) were pursued by the Revenue, against Rakesh Gupta & Ors. In the meanwhile, claiming that the materials gathered and the statements made in the course of search were relevant, the Revenue sought to re-open the petitioner's assessment for AY 2008-09. The Additional CIT approved this move, on 23.03.2015. It is alleged that on the same day, the AO issued a notice under Section 148 in the name of Jindal Metal Co. This could not be served as the shop was closed on 24/25 and 26.03.2015. It is alleged that one Rajesh Kumar, the process server put a note dated 24.03.2015 on the file stating therein that on enquiry it was found that the person has sold this shop long time ago. But he affixed the notice under Section 148 on 26.03.2015 which as per the affixture report was witnessed by one Anil Kumar, Inspector of Income Tax.

3. On 05.10.2015, the AO issued notice under Section 142 (1) to the petitioner which was not responded to in the course of reassessment

proceedings. Again, on 04.01.2016, a notice of hearing and final assessment was sought to be served; due to the petitioner's absence, it was affixed at the premises; in these circumstances, the AO completed the reassessment on 11.01.2016, at ₹12,52,390/- after allowing credit of pre-paid taxes, if any, and charged interest u/s 234A, 234B, 234C and 234D of Income Tax Act as per law. Penalty proceedings under Section 271 (1) (b) & 271 (1) (c) of the Act too were initiated.

4. The petitioner apparently did not respond; however, he approached the CIT under Section 264 of the Income Tax Act, seeking revision of the reassessment order. In the revision petition, it was averred as follows:

“The petitioner received on 28/01/2016 an assessment order passed under section 143(3)/147 of the I T Act, 1961 on 11-01-2016 accompanied by a notice of demand of date for Rs 785588.00 from the ITO, Ward-63(3), New Delhi in the case of M/s Jindal Metal Co. in the status of Firm for Assessment Year 2008-09.

As it was not addressed to the petitioner and did not emanate from his jurisdictional Assessing Officer, namely, ITO, Ward-26(4), New Delhi the petitioner took these to have been miss-sent and didn't bother much about it.

On 21-12-2016 the petitioner received yet another assessment order passed under section 143(3)/147 of the I T Act, 1961 accompanied by another notice of demand of date for Rs.589960.00 again from the ITO, Ward-63(3), New Delhi in the case of M/s Jindal Metal Co. in the status of firm for Assessment Year 2009-10.

Alarmed by the recurrence the petitioner sought inspection of the assessment records of the Firm M/s Jindal Metal Co, and came to know that the learned AO, ITO, Ward-63(3), New Delhi had acted on receipt of some information from ACIT, Central Circle 10, New Delhi about some alleged accommodation bills having been issued by Shri Rakesh Gupta, Vinesh Gupta, Navneet Jain, Vaibhav Jain to various traders including one M/s Jindal Metal Co. which have culminated in these assessments.

Since the petitioner is also doing business under the trade name M/s Jindal Metal Co. and the address of the Firm assessed by the

AO coincides with that of the petitioner, he felt that it may be possible that the ITO, Ward-63(3), New Delhi intended to assess the petitioner himself and as the petitioner is a law abiding citizen and an honest tax payer and doesn't want to dodge any proceedings intended to assess him, he decided to intervene. He has preferred an appeal to the learned CIT (Appeal) XX New Delhi impugning the assessment order dated 21-12-2016 for the assessment year 2009-10 and since the time for filing an appeal against the assessment order dated 11-01-2016 for the assessment year 2008-09 has elapsed, the petitioner has come up before you with this humble petition under section 264 of the Income Tax Act.”

5. The CIT disposed of the revision petition, stating as follows:

“I have carefully considered the submission of the assessee in the petition under reference and the comments offered by the assessing officer in this regard. It is a fact on record that the assessee had not bothered to appear before the assessing officer in response to valid notice issued under section 148 of the income tax act 1961 and assessee has partially admitted its lapse, which according to him is due to the fact that the notice u/s 148 of the IT Act and subsequent assessment order was received on January 28, 2016 passed under section 144/147 of the IT Act 1961 dated 11.01.2016 accompanied by a notice of demand of status of firm for the A.Y. 2008-09 but accordingly to the assessee as what he claims that as the same was not addressed to the petitioner assessee and did not emanate from his jurisdictional assessing officer, namely ITO Ward 26(4), New Delhi the assessee petitioner look the assessment order and notice of demand to have been misspent and he did not bother accordingly, that it is only on 21.12.2016, when the petitioner received yet another assessment order passed under section 144/147 of the IT Act accompanied by another notice of demand of date in the case of M/s Jindal Metal Co. in the status of firm for the A Y 2009-10, he sought inspection of the assessment records of the firm M/s Jindal Metal Co. and came to know about the factual details of the case and intervened in the matter and subsequently filed the revision petition as the time for filing an appeal against the assessment order dated 11.01.2016 for the A.Y. 2008-09 had elapsed. However it IS evident that due to no-

cooperative and recalcitrant attitude of the assessee he could file any appeal before the CIT (Appeal) though the assessment order was duly served on the assessee on 28.01.2016 as also admitted by the assessee. The order has been validly issued by the assessing officer u/s 144 r.w.s. 147 of the IT Act 1961. Moreover the assessee in its audit report u/s 44AB of the IT Act 1961, has reflected 5870/37, First Floor, Basti Harphool Singh, Sadar Bazar, Delhi as his business address. Here the 'reason to believe' of the assessing officer is based on relevant and material reasons and the assessee is required to file a return of income in response to issue of notice under section 148 of the IT Act 1961, even if return is filed under section 139 or 142(1) of the IT Act, therefore, this petition of the assessee seeking relief for the cancellation of the assessment order is hereby dismissed being devoid of any merits. However, the assessing officer should verify the details submitted by the assessee during the review petition filed before the undersigned and take appropriate action as provided under the income tax act, 1961 including rectification for carrying out the change of status of the assessee and if deemed necessary may obtain the necessary records of the case from the present assessing officer of the assessee he being the correct jurisdictional officer of the case under reference. The petition of the assessee is disposed of accordingly."

6. It is urged by the petitioner that the entire proceedings right from the issuance of notice under Section 148 followed by the framing of the assessment order under Section 147 of the Act are without jurisdiction. It is submitted that the foundation of the case rests on the search conducted on Rakesh Gupta & Ors. on 26.04.2010. The search was carried out under Section 132 of the Act by the DGIT (Investigation). During investigations, it was found that these persons were engaged in the business of providing accommodation entries. As a consequence of this, assessment orders of the above persons were passed by the ACIT, Central Circle-X under Section 153A/143(3) of the Act on 28.03.2013. It is submitted therefore, that the proceedings could have been initiated only under Section 153C, and not through reassessment.

7. It is stated that the entire proceeding under Section 147 is vitiated as the jurisdictional notice u/s 148 of the Act has not been served upon the petitioner. The fact of the matter is that the Section 148 notice dated 23.03.2015 was sent by Speed Post on 23.03.2015. This could not be served because in terms of the report, the shop was found to be closed on 24, 25 and 26.03.2015 itself. The notice so sent apparently came back to the AO on 30.3.2015. But before this report of non-service could come back, the said notice was said to be affixed on 24.03.2015. The affixture was said to be made under Order V Rule XVII of the Code of Civil Procedure. It is submitted that as per the affixture report, Mr. Rajesh Kumar, the notice server stated that he had affixed the notice at the address of the petitioner, in the presence of the Inspector, who affirmed that the notice has been affixed by the notice server at the last known address. It was therefore, argued that the entire reassessment proceedings and additions made were vitiated and consequently, the Commissioner erred in not interfering with it. Learned counsel relied on some decisions, notably *R. K. Upadhyay v Shanabhai P. Patel* (1987) 3 SCC 96 and that of this Court in *Commissioner of Income Tax v Chetan Gupta* (2016) 382 ITR 613 (Del) which, following *R. K. Upadhyay* (supra) and considering other judgments as well, has reiterated that the legal requirement of service of notice upon the assessee in terms of Section 148.

8. The materials on record show that the petitioner had one PAN number; furthermore, it is not in dispute that he was served with proceedings relating to reassessment notice. However, according to his admission (in the averments in the revision petition) notice of assessment and notice of demand for the subsequent assessment years were received by him. These established that he was functioning at the address to which the reassessment notices (and hearing notices) were addressed. In these

circumstances, his claim that the process server's file noting *conclusively* established that notice could not be served (due to his absence) and the defect alleged in the affixture (at the address) is insubstantial and unmerited. The revision petition admitted in clear terms that the reassessment order and subsequent demand notice, were received. In the circumstances, the argument that notice of reassessment and hearing notices were not received, rings hollow.

9. Undoubtedly, reassessment proceedings can be initiated and completed after notice to the assessee and granting opportunity to them. However, the facts of this case reveal that not only were the notices received, even the reassessment order was received (the revision petition admits as much) and the assessee did not care to appeal against it; concededly, he filed the revision petition after the period of limitation. Given these facts, the Commissioner cannot be faulted for rejecting the revision petition on the ground that there was no jurisdictional error.

10. For the above reasons, this court is of opinion that there is no merit in this petition; it is accordingly dismissed but without any order on costs. Pending applications also stand dismissed.

S. RAVINDRA BHAT, J.

PRATEEK JALAN, J.

OCTOBER 31, 2018