



2025:AHC:168164-DB

A.F.R.

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HIGH COURT OF JUDICATURE AT ALLAHABAD

INCOME TAX APPEAL No. - 436 of 2012

Mahesh Gautam

.....Appellant(s)

Versus

Commissioner Of Income Tax

.....Respondent(s)

Counsel for Appellant(s)	:	Rahul Agarwal
Counsel for Respondent(s)	:	Manu Ghildiyal

Court No. - 40

HON'BLE SARAL SRIVASTAVA, J.

HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Delivered by Hon'ble Arun Kumar Singh Deshwal, J.

1. Heard Sri Ankur Agarwal, Advocate, holding brief of Sri Rahul Agarwal, learned counsel for the appellant and Sri Manu Ghildiyal, learned counsel for the respondents.

2. Present income tax appeal has been filed u/s 260A of Income Tax Act, 1961 (hereinafter referred to as 'the Act, 1961') against the order dated 16.11.2011 passed by Income Tax Appellate Tribunal, Agra Bench, Agra for the A.Y. 2002-03.

3. Present appeal was admitted on 27.03.2012 on the following substantial questions of law:

"1. Whether the finding of the Tribunal that the notice under Section 148 of the Income Tax Act had been validly served on the appellant, by holding that the findings recorded in the Assessment Order and in the first appellate order were incorrect only because the envelope containing the unserved notice could not be found in the original records, is perverse and liable to be set aside?

2. Whether in view of the report of the Inspector (sent by the Assessing Officer to effect service of notice on the appellant) that the whereabouts of the appellant could not be ascertained and in absence of the Assessing Officer acting on that report by taking steps to serve the appellant through affixture, etc. on his last known address, the procedure prescribed for service of notice under Section 282 of the Income Tax Act

stood complied with and the Tribunal is justified in holding that the notice was validly served on the appellant?"

4. Appellant filed his return of income for A.Y. 2002-03 on 23.10.2002, declaring an income of Rs.3,90,860/-. Thereafter, on the information received from the Central Excise Department, the Assessing Officer, after taking the required approval, issued notice u/s 148 of the Act, 1961, to the appellant for the A.Ys. 2001-02, 2002-03 and 2003-04. These notices were sent via speed post to appellant's address, but no return was filed by the appellant. Thereafter, notice u/s 142(i) of the Act, 1961 was also issued for the above assessment years, requiring the appellant to furnish some information and details, and a date was fixed for hearing on 20.08.2008, but in response to the same, neither the appellant nor his authorized representative appeared nor filed any application for adjournment. Thereafter, another notice was also sent to the appellant fixing the date for hearing on 02.12.2008 at two addresses available on record. Still the appellant failed to appear before the Assessing Officer. Thereafter, the Assessing Officer sent the Income Tax Inspector to deliver a notice to the address on record. However, the Income Tax Inspector reported that the whereabouts of the appellant could not be ascertained. Therefore, Assessing Officer continued with the re-assessment proceeding and passed ex parte order u/s 147 read with Section 144 of the Act, 1961, assessing the total income of appellant as Rs.11,87,980/- for the A.Y. 2003-04. This order was sent to the appellant's address in Khandaar Swai Madhopur, Rajasthan, which was duly received by him.

5. The appellant filed an appeal against the order dated 15.12.2008 passed by Assessing Officer before Commissioner of Income Tax (Appeal)-II, Agra which was registered as Appeal No.CIT(A)-II/268, 269 & 270/DCIT (CC)/AGR/08-09. The appeal of the appellant was allowed on the ground that the notice u/s 148 of the Act, 1961, sent to the appellant was returned back. Therefore, in the absence of service of notice issued u/s 148 of the Act, 1961, the process of initiating re-assessment proceedings u/s 142 of the Act, 1961, was erroneous. However, the Income Tax Department (Revenue), feeling aggrieved by the order passed in appeal by the Commissioner of Income Tax, challenged the same before the Income Tax Tribunal, Agra Bench, Agra.

6. The Income Tax Appellate Tribunal vide judgement dated 16.11.2011 allowed the appeal of the Income Tax Department (Revenue) so far as the A.Y.s 2002-03, 2003-04 are concerned and dismissed the appeal for the A.Y. 2001-02. The reason given by the Income Tax Tribunal for allowing the appeal was that there was nothing on record that notice u/s 148 of the Act, 1961, sent to the assessee was returned back as no envelope was available on record. Therefore, in absence of envelope containing the notice, it would be presumed that notice has been served upon the assessee in view of the presumption u/s 114(f) of the Indian Evidence Act, 1872 (hereinafter referred to as 'the Act, 1872') and this fact was ignored by the Assessing Officer as well as the first appellate court.

7. The above order of Income Tax Appellate Tribunal is under challenge in the present appeal regarding the A.Y. 2003-04.

8. Learned counsel for the appellant has submitted that the order passed by the Income Tax Appellate Tribunal is absolutely erroneous as the Assessing Officer as well as first appellate court has recorded specific finding that notice u/s 148 of the Act, 1961 sent through speed post was returned back then merely because envelope was not available on record and same was missing, it cannot be presumed that notice has been deemed to be served upon the appellant by taking presumption u/s 114(f) of the Act, 1872. It is further submitted by learned counsel for the appellant that the notice has to be served as per the procedure mentioned u/s 282 of the Act, 1961 wherein the word 'post' has been mentioned which means only 'registered post' as per Section 27 of the General Clauses Act, 1897 (hereinafter referred to as 'the Act, 1897'), not the speed post. Therefore, service of notice u/s 148 of the Act, 1961 is not sufficient upon the appellant, therefore, consequential proceeding of re-assessment is absolutely erroneous.

9. It is also submitted by learned counsel for the appellant that the Income Tax Inspector sent by the Assessing Officer submitted a report that assessee is not traceable, therefore, unless he affixed the notice at the last known address of the appellant as per the procedure prescribed u/s 282 of the Act, 1961, the service of notice u/s 148 of the Act, 1961, cannot be deemed to be sufficient.

10. In support of his contention, learned counsel for the appellant has relied upon the judgement of the Division Bench of this court in the case of **Smt. Gayatri Devi Vs. The Commissioner of Income Tax Agra and Another in Income Tax Appeal No.11 of 2006** as well as judgement of Division Bench of Jharkhand High Court in the case of **Milan Poddar Vs. Commissioner of Income Tax, Central Revenue Building, Main Road, Ranchi & Another in T.A. No.59 of 2010.**

11. Per contra, learned counsel for Revenue (income tax department) has submitted that while deciding the appeal, Income Tax Tribunal on perusal of record found that there is no envelope on record showing the notice sent to the appellant was returned back. Therefore, finding of assessing authority as well as first appellate authority was contrary to record and same was rightly set aside by the Income Tax Tribunal in appeal. Therefore, there is no illegality in the order passed by the Income Tax Appellate Tribunal. In support of his contention, learned counsel for the income tax department has also relied upon the Division Bench judgement of the Jharkhand High Court in **Milan Poddar's case (supra)** wherein the Division Bench of Jharkhand High Court has observed that speed post is also a registered post. It is further submitted by learned counsel for the income tax department that though income tax officer personally visited the address given by the appellant and submitted report that appellant is not traceable though that was not required because notice has already been deemed to be served upon the appellant as the notice sent through registered post did not return back. It is also submitted that the assessment order was duly received by the appellant on the address on which the notice u/s 148 of the Act, 1961 was sent to the appellant. Therefore, no substantial question of law arises in the present case and appeal deserves to be dismissed.

12. After hearing the submission of learned counsel for the parties and on perusal of record, it is clear that this fact is not disputed that the envelope containing the notice u/s 148 of the Act, 1961 sent to appellant through registered post is not available on record as on date because this court itself perused the original record which was produced before this court in pursuance of order dated 15.12.2016 even though the assessing officer as well as first appellate authority has recorded the finding that notice sent to the appellant

has returned back.

13. Service of notice u/s 148 of the Act, 1961, upon the assessee is a precondition to initiate reassessment proceedings. This being the provision of a taxing statute, it should be construed strictly. Section 148 of the Act, 1961 is being quoted as under:

"148. Issue of notice where income has escaped assessment.—1 [(1)] Before making the assessment, reassessment or recomputation 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 during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139:

[Provided that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005 in response to a notice served under this section, and

(b) subsequently a notice has been served under sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to sub-section (2) of section 143, as it stood immediately before the amendment of said sub-section by the Finance Act, 2002 (20 of 2002) but before the expiry of the time limit for making the assessment, re-assessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice:

Provided further that in a case—

(a) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and

(b) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of sub-section (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in sub-section (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.]

[Explanation.—For the removal of doubts, it is hereby declared that nothing contained in the first proviso or the second proviso shall apply to any return which has been furnished on or after the 1st day of October, 2005 in response to a notice served under this section.]

[(2) The Assessing Officer shall, before issuing any notice under this section, record his reasons for doing so.]"

14. So far as the contention of learned counsel for the appellant that for service of notice as per Section 282 of the Act, 1961, notice should be served on the assessee personally through, post means only the registered post not the speed post is concerned to decide the question, it would be appropriate to reproduce Section 282 of the Act, 1961 as existing at the relevant time is being quoted as under:

"282- Service of notice generally

(1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) Any such notice or requisition may be addressed-

(a) in the case of a firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family;

(b) in the case of a local authority or company, to the principal officer thereof;

(c) in the case of any other association or body of individuals, to the principal officer or any member thereof;

(d) in the case of any other person (not being an individual), to the person who manages or controls his affairs."

15. From perusal of Section 148 of the Act, 1961, it is clear that notice has to be served on the assessee personally and as per Section 282 of the Act, 1961, notice required under the Act, 1961 may be served on a person either by post or as a summons issued by the court under the Code of Civil Procedure, 1908.

16. The word 'post' has not been defined in the Act, 1961 or in the Indian Post Office Act, 1898, the Post Office Act, 2023, the Indian Post Office Rules, 1933, the Post Office Rules, 2024, but it has been defined in Section 2(1)(k) of the Post Office Regulation, 2024. As per this definition, any system for collection, dispatching, conveyance and delivery of items by the postal network is 'post'. Regulation 2(1)(k) is being reproduced as under:

"2(1)(k). 'Post' means any system for collection, clearance, sorting, dispatch, conveyance, and delivery of items by the postal network."

17. In view of the above mentioned definition of post, registered post or speed post, both come within the definition of post. However the procedure of sending and serving the summons

issued by the court under C.P.C. includes not only sending the notice through registered post but also personal service and in absence thereof, affixing the notice at the house of assessee. However, if there is no proof of service of notice sent through post to the addressee, then the presumption of service of registered post can be invoked as per Section 27 of the Act, 1897. But for invoking the presumption of service of notice through post upon the addressee, the condition mentioned u/s 27 of the Act, 1897 should be fulfilled which requires a proper address, pre-paying and posting by registered post. Section 27 of the Act, 1897 is being mentioned as below:

“27. Meaning of service by post.-Where any [Central Act] or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression serve or either of the expressions give or send or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

18. From the perusal of Section 27 of the Act, 1897, it is clear that the meaning of service by post has been defined as **service properly addressing, pre-paying and posting by registered post**, a letter containing a document.

19. The term "post" and "registered post" are relevant for the present purpose. In the case of **Milan Poddar Vs. Commissioner of Income Tax (supra)**, the Division Bench of Jharkhand High Court has observed that the speed post is also a registered post as the speed post is also included in the generic word "post or registered post". It is relevant to mention here that the words 'registered post' mentioned in Section 27 of the Act, 1897, was interpreted by the Division Bench of Jharkhand High Court in **Milan Poddar (supra)** as per its literal meaning by interpreting it using a liberal interpretation and observed that registered post means the post recorded in a register or book and even the ordinary post for which record is maintained will also come in the definition of registered post. Paragraph no.18 of the judgement of **Milan Poddar (supra)** is being quoted as under:

"18. In view of the reasons discussed above, we are of the considered opinion that the

notice under Section 282 the Act of 1961, can be sent by post including "Ordinary post", "Registered post" as well as "Speed-post". The post is a generic word and its species are "Ordinary post", "Registered post", "Speed-post" and "Under Certificate of Posting" etc. Learned Tribunal rightly relied upon page 102 of "Maxwell on The Interpretation of Statutes" (Twelfths Ed. By P.St. J. Langan), wherein it has been stated that the "language of the statute is generally extended to new things which were not known and could not have been contemplated when the Act was passed, when the Act deals with a genus and the thing which afterwards comes into existence was a species of it." The Speed Post is a new mode of sending post, and therefore, this new postal mode if is not mentioned in Statute specifically, even then because of above reason that service by Speed Post is included in generic word "Post or "Registered Post".

20. The Single Judge Bench of Allahabad High Court in **S.C.C. Revision No.154 of 2015 (Smt. Jaswant Kaur Vs. Additional District Judge, Court No.1, Faizabad And Ors.)** also observed that notice by speed post is no less than a notice by registered post, as the speed post is a quicker mode of service sent through registered post. Therefore, the presumption of service u/s 27 of the Act, 1897 will also apply to the notice sent through speed post. Relevant extract of the judgement of **Smt. Jaswant Kaur (supra)** is being quoted as under:

"In so far as the question of sending notice is concerned, undisputedly the envelope containing the notice was correctly addressed and the notice was re-directed to a place where the respondents were carrying on business. Notice by speed post is no less than a notice by registered post for the reason that it is quicker mode of service available in the developed urban areas. The only distinction is that a registered letter is handed over to the addressee alone whereas a letter by speed post can be received by any person present at the address. The respondents have not disputed the address mentioned on the envelop, therefore, denial of presumption in favour of the revisionist under Section 27 of the General Clauses Act is clearly perverse."

21. The phrase 'registered post' are mentioned in Section 27 of the Act, 1897 cannot be interpreted liberally for the purpose of the income tax act. It is established law that taxing statute has to be interpreted strictly. Thus, the term 'registered post' in Section 27 of the Act, 1897 should be understood in reference to the registered post services provided by the Indian Postal department which were initially covered by the Indian Post Office Rules, 1933 (hereinafter referred to as 'the Rules, 1933') and is now regulated under the Indian Post Office Rules, 2024 and the Post Office Regulations, 2024.

22. It is apropos to mention that the Rules, 1933 were framed under the Indian Post Office Act, 1898. However, the Indian Post Office Act, 1898 has since been repealed by the Post Office Act, 2023 wherein Post Office Rules 2024 and Post Office Regulation 2024 were framed. Nonetheless, at the time the notice was issued in the present case in the year 2008, the Rules, 1933 were still in effect. Therefore, difference between the registered post service as

well as speed post service can be discussed taking into consideration the Rules, 1933.

23. As per Rule 58 of the Rules, 1933 any letter or parcel may be registered at any post office for transmission by post to any other post office. The said Rule is being quoted as under:

“58. Letters, letter cards, book and pattern packets, parcels and newspapers prepaid with postage at newspaper rates of postage may be registered at any post office for transmission by post to any other post office.”

24. As per Rule 60 of the Rules, 1933, pre-payment of the postage and registration fees is obligatory in the case of all registered articles. The said Rule is being quoted as under:

“60. The prepayment of the postage and registration fees is obligatory in the case of all registered articles.”

25. As per Rule 62 of the Rules, 1933 when an article is presented for registration at the post office then receipt shall be given to him for posting the registered article. The said Rule is being quoted as under:

“62. A receipt shall be given to the person who presents an article for registration at the post office window during the hours prescribed for posting registered articles.”

26. However, as per the Rule 63 of Rules, 1933, **no registered article shall be delivered to the addressee unless and until he or his agent has signed a receipt for it** and Rule 64 of the Rules, 1933 prescribes that if sender of a registered article wants to attach acknowledgement of delivery of article then after signing it, he has to pay additional postage. Rules 63 and 64 of the Rules, 1933 are being quoted as under:

“63. No registered article shall be delivered to the addressee unless and until he or his agent has signed a receipt for it in such form as the Director General shall prescribe.

64. (1) If the sender of a registered article pays at the time of positing the article a fee of rupee three in addition to the postage and registration fee, there shall be sent to him on the delivery of the article a form of acknowledgment which shall be signed in ink by the addressee or his duly authorized agent or if the addressee refuses to so sign shall be accompanied by statement to the effect that the addressee or his duly authorized agent has refused to so sign:

‘Provided that no fee shall be payable in respect of a registered “Blind Literature” packet for which an acknowledgment is required.

(2) No article for which an acknowledgment is required under sub-rule(1) shall be accepted for registration unless it bears the name and address of the sender and is accompanied by a prescribed form of acknowledgment duly filled in and securely fastened to such article, and unless the article bears the superscription Acknowledgment Due on the address side.”

27. Similarly, the Inland Speed Post, which was introduced in 1986, was mentioned in Rule 66B of the Rules, 1933. As per Rule

66B of the the Rules, 1933, Inland Speed Post Article may be booked after obtaining receipt thereof at the specified places for the delivery to certain areas. As per Rule 66B(1) of the Rules, 1933, classes of mail which can be sent by registered service can also be sent through speed post service.

28. As per Rule 66B(3) of the Rules, 1933, the envelope through speed post must bear the name and address of the sender and also the pin code of the post offices of serving address.

29. Similarly, as per Rule 66B(5) of the Rules, 1933, **speed post service is a service for delivering postal articles within stipulated time on specified city or town.** Rules 66B(1) and 66B(3) of the Rules, 1933 are being quoted as under:

“66-B (1) INLAND SPEED POST SERVICE:- Inland Postal articles may be booked, after obtaining receipts therefore, at the places specified in column (1) of the Schedule below and at the post offices specified in the corresponding entries in column (2) of the said Schedule, for delivery under the Inland Speed Post Service, subject to the following conditions, namely:-

(1) Inland Speed Post Service shall be available in respect of all classes of mails, which can be sent by registered service:

(3) articles for booking under this service shall prominently bear on, the front the superscription “INALAND SPEED POST” and shall also bear the name and address of the sender in addition to that of the addresses, including the PIN codes of the Post Offices of deliver serving the addressee and the sender and their telephone number , if any:”

30. From the above quoted Rules, 1933, it is clear that **registered post is addressee-specific and it has to be delivered to the addressee by taking a signature. However, speed post is address-specific, it can be delivered to any person at the mentioned address.**

31. Though, as of date, Rules, 1933 have been repealed by the Post Office Rules, 2024, and Post Office Regulations 2024 have also been issued under the Post Office Act, 2023. But the difference in registered post, speed post is same as mentioned in the Rules, 1933. It is also relevant to mention here that now the registered post and speed post have been merged, and in place thereof registered speed post has been initiated from September 2025, but that is not relevant to decide the controversy in the present case.

32. Section 148 as well as Section 282 of the Act, 1961 clearly state that a notice through post must be delivered to the

addressee personally, not simply to his address. Consequently, in the absence of personal service on the assessee, the legal presumption of service u/s 27 of the Act, 1897 and Section 114(f) of the Act, 1872, can only be applied when notice is sent via registered post, not by speed post. Therefore, for the purpose of deemed service u/s 27 of the Act, 1897 for the notice u/s 148 of the Act, 1961, speed post cannot be considered equivalent to registered post. It is appropriate to reiterate that notice sent by speed post, if personally served upon the assessee, then the same is sufficient service as per Section 148 read with Section 282 of the Act, 1961. Therefore, we are respectfully disagree with the observation of Division Bench of Jharkhand High Court in the case of **Milan Poddar (supra)**.

33. The Division Bench of Delhi High Court also considered Section 282 of the Act, 1961 for the purpose of sending notice u/s 148 of the Act, 1961. In the case of **Commissioner of Income Tax Vs. Hotline International P. Ltd** reported in **(2008) 296 ITR 333 (Del)** and after considering the scope of sending notice through post as well as other mode as mentioned in CPC for sending summons, observed that for the purpose of the Act, 1961, registered post ought to be sent along with acknowledgement deed and notice has to be served personally upon the assessee himself or his authorised agent and observed that merely a refusal to receive notice by the security guard cannot be treated as service upon the assessee. In case of refusal by the assessee to receive notice, it has to be affixed. Paragraph nos.22, 23, 24 and 25 of **Hotline International P. Ltd (supra)**, which are being quoted as under:

"22. As per Order V, rule 12 of the Code of Civil Procedure referred to above, wherever it is practicable, the service has to be effected on the defendant in person or on his agent. Admittedly, in the present case, notice under section 148 of the Act was not tendered to the assessee nor was the same refused at all by the assessee. It is an admitted case of the Revenue that when the officials of the Income-tax Department went to serve the notice under section 148 for the assessment year 1995-96, the security guard informed them that the company was closed for Holi festival holidays. The security guard by no stretch of imagination can be said to be the agent of the assessee and admittedly no notice was tendered either to the assessee or his agent nor was the same refused either by the assessee or his agent.

23. Under Order V, rule 17 of the Code of Civil Procedure, the affixation can be done only when the assessee or his agent refuses to sign the acknowledgment or could not be found. Here, in the present case, no effort was made by the Income-tax Department to serve the notice upon the assessee, since the company of the assessee was closed due to Holi festival holidays, and admittedly no effort was made by the serving officer to locate the assessee.

24. Even otherwise, as per Order V, rule 19A of the Code of Civil Procedure, the notice sent by registered post ought to have been sent along with acknowledgment due but admittedly it was not sent along with acknowledgment due.

25. So, from the entire material available on record we have no hesitation in holding that there has been no valid service of notice under section 148 of the Act upon the assessee as the same was neither tendered to the assessee or his agent, nor the same was refused by either of them."

34. The Division Bench of Allahabad High Court in the case of **Madan Lal Agarwal Vs. Commissioner of Income-Tax, Kanpur** reported in **(1983) 144 ITR 745 (All)** observed that issuance of valid notice u/s 148 of the Act, 1961 is a condition precedent for reassessment u/s 147 of the Act, 1961 and therefore, in the absence of valid service upon the assessee, proceeding u/s 147 of the Act, 1961 for reassessment cannot be initiated. Relevant extract of **Madan Lal Agarwal (supra)** is being quoted as under:

"It is now well settled, and we do not consider it necessary to advert to numerous authorities in this regard cited at the Bar, that issuing of a valid notice to the assessee under s. 148 of the I. T. Act within the period specified under s. 149 of the Act is a condition precedent to the validity of any assessment to be made against such assessee under s. 147 of the Act. Accordingly, where no such notice has been issued or if the notice issued is not valid or the same has not been served on the assessee in accordance with law, it will not be possible to sustain the eventual assessment made under s. 147 on the basis of such notice. We may also take it that where the notice Issued to an assessee is vague, it would not be possible to rely upon it to sustain an assessment made under s. 147 of the I. T. Act. In this regard two questions that arise for our consideration are: (1) whether the notice dated 29th September, 1962, issued under section 148 suffers from the vice of vagueness; and (2) whether the said notice can, after subsequently removing the vagueness, be relied upon for sustaining an assessment under s. 147 of the I. T. Act."

35. In the present case, it is undisputed that notice was sent by speed post without any acknowledgement rather than through registered post which is a fundamental requirement for service of notice upon the addressee personally. Consequently, the presumption of service u/s 27 of the Act, 1897 read with Section 114(f) of the Act, 1872 cannot be invoked in relation to the notice sent by speed post even if the envelope containing the notice u/s 148 of the Act, 1961 was not returned back. Additionally, the learned Tribunal recorded finding that envelope having the notice so returned is not readily traceable, without verifying from other documents that the envelope was actually available on record or not, during the assessment and first appellate proceeding, though there was specific finding of assessing and appellate authorities in that envelope sent through speed post to the assessee containing notice was returned back. Therefore, this court decides the substantial question no.1 in favour of the appellant and concludes that there was no service of notice u/s 148 of the Act, 1961 through post upon the assessee (appellant).

36. Regarding the substantial question no.2 about the failure to affix the notice at the last known address of the assessee (appellant) especially when he was not traceable at that address, it is relevant to mention that service through Income Tax Officer was attempted by the assessing officer in accordance with Part II of Section 282(i) of the Act, 1961. This is aligned with the Order V Rule 17 of Code of Civil Procedure, which requires affixation of notice when personal service is not possible. In the present case, it is not in dispute that Income Tax Officer did not affix notice at the assessee's address despite the fact that assessee was not traceable there. Therefore, service of notice through personal service as specified by Order V Rule 17 of CPC and Part II of Section 282(i) of the Act, 1961 was not validly made. Therefore, substantial question no.2 is also decided in favour of the appellant by observing the service of notice through the Income Tax Inspector was also not made upon the appellant by affixing the same on the address of the assessee in absence of personal service upon the assessee.

37. In view of the above, present appeal is **allowed** and the order dated 16.11.2011 passed by Income Tax Appellate Tribunal, Agra Bench, Agra for the A.Y. 2002-03 is hereby set-aside.

September 19, 2025
S.C.

(Arun Kumar Singh Deshwal,J.) (Saral Srivastava,J.)