

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA No.372 of 2007

03.04.2007

Judgment reserved on: 26th March, 2007

Judgment delivered on: 3rd April, 2007

THE COMMISSIONER OF INCOME TAX
CENTRAL REVENUE BUILDING
NEW DELHI Appellant

Through Mr. Sanjeev Sabharwal, Adv.

Vs.

EQBAL SINGH SINDHANA,
D-13, ASHOKA NIKETAN,
DELHI ? 110092 Respondent
Through Mr. Salil Aggarwal with
Mr. Prakash Kumar, Advs.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA

V.B. GUPTA, J.

Being aggrieved by the order dated 13th July, 2006 passed by Income Tax Appellate Tribunal (for short as 'Tribunal') in ITA No. 3259/Del/2004 relevant for the assessment year 2001-02, the Revenue has filed the present appeal.

2. The brief facts are that Assessee filed his return of income on 31st October, 2001 which was processed under Section 143 (1) of the Income Tax Act, 1961 (for short as 'Act') on 31st October, 2002. Thereafter, the return was taken up for scrutiny and notice under Section 143 (2) of the Act was issued on 25th October, 2002 by registered post at the address given in the return of income i.e. B-226, Vivek Vihar, Delhi. The said notice was returned undelivered by the Postal Authorities with the remarks that "Plot No. - 226 does not exists."

3. Thereafter, another notice was served under Section 143 (2) of the Act on 14th November, 2002 and the assessment was completed on a total income of Rs.56,70,560/- by order dated 4th March, 2004 passed under Section 143 (3) of the Act.

4. The Assessee filed an appeal before Commissioner of Income Tax (Appeal) and took up the contention that the assessment is invalid for the reason that no notice under Section 143 (2) of the Act was served on it within the time prescribed by the proviso to this Section, as it existed at the relevant time. The Commissioner of Income Tax (Appeal) obtained a remand report from the Assessing Officer and held that the statutory notice under Section 143 (2) of the Act having been issued on 25th October, 2002 on the basis of address given in the return of income was within time and therefore, the assessment cannot be held to be invalid and accordingly he confirmed the assessment.

5. The assessee filed further appeal to the Tribunal and Tribunal vide its impugned order held that no notice under Section 143 (2) of the Act had been served on the Assessee on or before 31st October, 2002 and therefore, the assessment is invalid and thus allowed the appeal of the Assessee.

6. It has been contended by learned counsel for the Revenue that the notice dated 25th October, 2002 was issued within the prescribed period and the same was returned with the endorsement that "No Plot No. 226 exists" and it appears to be handi work of the Assessee himself who has connived with the Postal Authorities and obtained the alleged report for non service because, the subsequent notice addressed at the said address has been duly served and accepted by the Assessee and the earlier notice was returned by the Assessee only to defeat the service of notice and make it beyond limitation to escape rigours of Section 143 (2) of the Act and Assessee being at fault cannot take advantage of his own wrong.

7. On the other hand, it had been contended by learned counsel for the Assessee that no notice within the prescribed period has been served upon the Assessee and there is an interpolation on the address of the addressee mentioned on the notice and since no notice under Section 143 (2) has been served upon the Assessee within the prescribed period, the assessment in question is invalid.

8. The short question which arises for our consideration in this case as to whether notice under Section 143 (2) of the Act has been duly served upon the Assessee within the prescribed period or not.

9. Section 143(2) of the Act as it existed on the relevant time reads as under:-

“(2)Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to

be produced there, any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of twelve months from the end of the month in which the return is furnished.”

10. Section 282 of the Act provides as to how the notice under the Act are to be served. The relevant provision of this Section reads as under:-
Service of notice generally.

“282.(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).”

11. So, according to it, any notice under the Income Tax Act has to be served on the person named therein either by post or as if it were a summon issued by court under the Code of Civil Procedure.

12. Order V Rule 12 of the Code of Civil Procedure 1908 provides that wherever it is practicable, service shall be made on defendant in person or on his agent. The relevant provision reads as under:-

“R.12. Service to be on defendant in person when practicable, or on his agent “
Wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.”

13. Order V Rule 19A provides for simultaneous issue of summons for

service by post in addition to personal service. It reads as under:-

“R. 19A. Simultaneous issue of summons for service by post in addition to personal service.-(1) The Court shall, in addition to, and simultaneously with, the issue of summons for service in the manner provided in rules 9 to 19 (both inclusive), also direct the summons to be served by registered post, acknowledgment due, addressed to the defendant, or his agent empowered to accept the service, at the place where the defendant, or his agent, actually and voluntarily resides or carries on business or personally works for gain:

Provided that nothing in this sub-rule shall require the Court to issue a summons for service by registered post, where, in the circumstances of the case, the Court considers it unnecessary.

(2) When an acknowledgment purporting to be signed by the defendant or his agent is received by the Court or the postal article containing the summons is received back by the Court with an endorsement purporting to have been made by a postal employee to the effect that the defendant or his agent had refused to take delivery of the postal article containing the summons, when tendered to him, the Court issuing the summons shall declare that the summons had been duly served on the defendant.

Provided that where the summons was properly addressed, prepaid and duly sent by registered post, acknowledgment due, the declaration referred to in this sub-rule be made notwithstanding the fact that the acknowledgment having been lost or mislaid, or for any other reason, has not been received by the Court within thirty days from the date of the issue of summons.”

14. As per case of the Revenue, notice under Section 143 (2) was sent by registered post, which was received back undelivered with the endorsement “No Plot no. 226 exists”. Thus, admittedly, notice under Section 143 (2) of the Act was not served upon the Assessee. It may be pertinent to point out that Alphabet “B” is missing in the endorsement made by the postal authorities. Thus, it stands established that the postman had not gone to “Plot No B-226, Vivek Vihar, Delhi” because, his endorsement does not say that “Plot No. B-226, Vivek Vihar, Delhi” does not exist. On the other hand, it states that “No Plot No. 226 exists”. Further, there is interpolation on the address of the Assessee mentioned on the Registered Envelope i.e. over the alphabet “B”.

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

16. So, from the entire material available on record, we have no hesitation in holding that no notice under Section 143 (2) of the Act had been served upon the Assessee within the prescribed period and therefore the assessment made by the Assessing Officer, is invalid.

17. Accordingly, we find no reason to differ with the finding given by the Tribunal, which is a finding of fact and as such there is no force in the present appeal.

18. Accordingly, the present appeal filed by the Revenue is, hereby, dismissed.

(V. B. GUPTA)

JUDGE

(MADAN B. LOKUR)

JUDGE

April 03, 2007