
(1980) 02 AHC CK 0023

In the Allahabad High Court

Case No : Income-tax Reference No. 98 of 1975

Addl. Commissioner of Income Tax

APPELLANT

Vs

Prem Kumar Rastogi

RESPONDENT

Date of Decision : 05-02-1980

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 12, Order 5 Rule 13, Order 5 Rule 15
Income Tax Act, 1961 — Section 249(2) , 282

Citation : (1980) 124 ITR 381

Hon'ble Judges : Satish Chandra, C.J;H.N. Seth, J

Bench : Division Bench

Advocate : R.K. Gulati and A. Gupta, for the Appellant; S.R. Dhawan, for the Respondent

Judgement

Satish Chandra, C.J.—For the assessment year 1965-66, the ITO passed an assessment order on 28th February, 1967. It was served on Sri R. K. Rastogi on 7th March, 1967. The assessee felt aggrieved and filed an appeal on 23rd March, 1969. The AAC held that the service on Sri Rastogi was valid. The appeal was beyond time by one year, 11 months and 15 days. It was accordingly dismissed. Aggrieved, the assessee went up to the Income Tax Appellate Tribunal. The Tribunal held that Sri Rastogi was not an authorised agent of the assessee. Service on him was immaterial. In fact, the assessee came to know of the passing of the assessment order later and he applied to obtain a copy on 25th February, 1969, and of the demand notice on 8th April, 1969. So, the appeal was filed within time. The further finding of the AAC that the memorandum of appeal was not accompanied by the demand notice was held not to vitiate the appeal. The Tribunal held that at the worst it was an irregularity. Accordingly, the Tribunal set aside the order of the AAC and directed him to dispose of the appeal on merits.

2. The Tribunal has, at the instance of the Commissioner, referred the following questions of law for our opinion :

"1. Whether, on the facts and in the circumstances of the case, service of the assessment order on Sri R. K. Rastogi was, in law, valid ?

2. Whether, on the facts and in the circumstances of the case, the appeal filed by the assessee before the Appellate Assistant Commissioner was barred by time ?"

3. Section 282 of the I.T. Act, 1961, provides for service of notice generally. It reads :

"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. "

4. Sub-section (1) provides the method of service. It can either be by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908. Sub-section (2) provides for the manner of addressing the summons of the notice. There is no dispute that the notices issued to the assessee were properly addressed. The only question is whether the service of the notice on Sri R. K. Rastogi was valid. It is not disputed that Sri R. K. Rastogi was not a member of the assessee-HUF. The Tribunal found that Sri Rastogi was not an authorised agent of the assessee-HUF. This finding also has not been questioned.

5. Mr. Gulati for the revenue stressed that in the past notices used to be served on Sri R. K. Rastogi and the assessee never took any objection that the service of notices on Sri Rastogi was improper or invalid. That may be so, but that fact by itself shall not make Sri Rastogi an authorised or recognised agent of the HUF.

6. Under Sub-section (1) of Section 282 a notice may either be sent by post or as provided in the Code of Civil Procedure. Order 5, C. P. C., makes a detailed provision as to the person on whom the summons are to be served or delivered. Under r. 12, service, as far as practicable, has to be on the person sought to be served, or on an agent empowered to accept the service. Rule 13 contemplates delivery of the summons on an agent or the manager personally carrying on the business on behalf of the assessee. Under Rule 15, service can also be effected on an adult member of the family under the conditions mentioned in that rule. On the findings, Sri Rastogi was neither a recognised nor an authorised agent, nor an agent who was carrying on the business of the assessee. He was not an

adult member of the assessee-family. Delivery of notices to Sri Rastogi was not valid according to the provisions of the Code of Civil Procedure.

7. Mr. Gulati did not invite our attention to any authority or any principle of law under which a person who has, in the past, accepted the notice on behalf of the assessee, can be deemed or treated to be a recognised or authorised agent. He invited our attention to Jangi Bhagat Ramawatar v. CIT [1929] 3 TC 418 (Pat) at page 421. In that case the finding was that Chottu Lal was the accredited agent of the assessee. A notice served on him was sufficient compliance of the law. Here, there is no such finding.

8. In V. D. M. R. M. Ramanathan Chettiar v. CIT [1927] 2 ITC 474 (Rang) [KB] also there was a finding that service on an agent, who was carrying on the business on behalf of the assessee, was good service. The case is ex facie distinguishable.

9. Similarly, the decision of the Bombay High Court in K.C. Tiwari and Sons Vs. Commissioner of Income Tax, Bombay, is inapplicable. The assessee had admitted service of notice. He had appeared and asked for an adjournment. Thereafter he was debarred from pleading lack of service. No such situation has arisen in our case.

10. In C.N. Nataraj Vs. Fifth Income Tax Officer, City Circle II, Bangalore, , it was held that service on the clerk of the assessee's father who was not an authorised agent, was invalid.

11. We are satisfied that delivery of the notice on Sri R. K. Rastogi was not a valid service of the assessment order on the assessee. The Tribunal was justified in holding that the appeal was within time.

12. In the result, question No. 1 is answered in the affirmative, in favour of the assessee and against the department, while question No. 2 is answered in the negative, in favour of the assessee and against the department.

13. The assessee will be entitled to costs which are assessed at Rs. 200.