(2012) 01 DEL CK 0491

In the Delhi High Court

Case No : Income Tax A. No. 1 of 2012 (A.Y. 2006-07)

CIT APPELLANT

Vs

Mascomptel India Ltd. RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:
Income Tax Act, 1961 — Section 143(2), 143(3), 260A(1)

Citation : (2012) 345 ITR 58

Hon'ble Judges : Sanjiv Khanna, J;R.V. Easwar, J

Bench : Division Bench

Advocate : N.P. Sahni and Ruches Sinha, for the Appellant; S. Krishnan, for the Respondent

Final Decision : Dismissed

Judgement

1. This appeal by the Revenue u/s 260A(1) of the income tax Act, 1961, impugns the order dated 17-6-2011, passed by the income tax Appellate Tribunal ("the Tribunal" for short) in the case of Mascomptel India Ltd. The appeal related to the assessment year 2006-07. The requirement to serve a notice u/s 143(2) of the Act was examined in Commissioner of Income Tax Vs. Lunar Diamonds Ltd., and it was held that notice under the said section must be served on the assessee within the time stipulated in the proviso. In case the notice was not served within the said time limit the assessment order passed would be null and void.

2. In the present case, the assessing officer had issued a notice u/s 143(2) dated 11-10-2007, to the respondent-assessee. The said notice was addressed at 44-Rajendra Bhawan, Rajendra Place, New Delhi. The notice could not be served and was received back with the remark of the postal authority that "no such person exists at the address mentioned". An inspector was deputed to serve the notice personally but he also reported that the company was not available at the address. The assessing officer, thereafter, served the notice by affixture. Date of notice of the affixture is, however, not stated in the assessment order. The

assessment was made ex parte/best judgment assessment order was passed.

3. The Commissioner of Income Tax (Appeals) and the Tribunal have held that the aforesaid service by the affixture was not valid. The findings of the Commissioner of Income Tax (Appeals) and the Tribunal are that the assessee had mentioned a different address in the return of income tax filed for the assessment year in question. In the return of income tax the address mentioned was 1-GF, AGCR Enclave, Karkardooma, Delhi. They have held that the assessee was earlier functioning from 44-Rajendra Bhawan, Rajendra Place, New Delhi, and had shifted from the said address in 2001. It has also come on record that the TDS Officer (who was also the assessing officer) had issued notice dated 1-10-2007, at I-GF, AGCR Enclave, Karkardooma, Delhi. The said address was also mentioned in the balance-sheet, profit and loss account, tax audit report as well as the assessment order u/s 143(3) dated 30-2-2007, for the assessment year 2005-06, i.e., the immediately preceding assessment year.

4. The aforesaid facts speaks for themselves. No attempt was made to serve the respondent-assessee at the correct address which was available with the Department and in fact stated in the return of the income for the assessment year 2006-07. Subsequent attempt to serve another notice u/s 143(2) at 1-GF, AGCR Enclave, Karkardooma, Delhi, in November, 2008, long after the expiry of the limitation period prescribed by the proviso, cannot help the Revenue. The appeal is dismissed.

