
(2007) 07 DEL CK 0086

In the Delhi High Court

Commissioner of Income Tax

APPELLANT

Vs

Dewan Kraft System (P) Ltd.

RESPONDENT

Date of Decision : 30-07-2007

Acts Referred:

Citation : (2007) 165 TAXMAN 139 : (2007) 160 TAXMAN 343

Hon'ble Judges : Vidya Bhushan Gupta, J; Madan B. Lokur, J

Bench : Division Bench

Judgement

1. The revenue is aggrieved by an order dated 22-9-2006 passed by Income Tax Appellate Tribunal, Delhi Bench-"G" in ITA No. 4424/Delhi/ 2004 relevant for the assessment year 2001-02.

2. The assessed had filed its return of income on 30-10-2001 declaring a loss.

3. On 29-10-2002 the assessing officer issued a notice to the assessed u/s 143(2) of the Income Tax Act, 1961 requiring him to attend his office on 13-11-2002. The notice was sent by speed post and by registered A/D.

4. It appears that the postal department went to serve the notice on the assessed on 31-10-2002 and on 1/2-11-2002 but service could not be effected.

5. Even before the report of the postal department could be received by the assessing officer, he deputed his Inspector on 30-10-2002 to serve the notice on the assessed. This appears to have been done because the assessing officer realised that the assessed could not have been served within the time prescribed by law through the normal postal channel because the notice was sent by the assessing officer at the very last minute.

6. The Inspector of the Income Tax department went to the office premises of the assessed and submitted his report in which he stated that the premises of the assessed were found locked. He further stated that since the case was a "limitation matter" there was no alternative but to affix the notice at the last known address which he did in the presence of Jeewan Lal, notice server on the

same date.

7. In the meanwhile, it appears that one Mrs. Deewan, Director of the assessed had personally filed the Income Tax returns for the assessed on 29-10-2002 and had met the assessing officer and his staff. There was apparently no talk of serving any notice on the assessed. This is mentioned in a letter dated 29-11-2002 sent by one A. Chaturvedi, Site Engineer of the assessed addressed to the assessing officer. It has also been mentioned in the letter that the office of the assessed is lying closed since 30-10-2002 because of sewer laying work undertaken by Jal Nigam. Along with the letter, two photographs have been attached showing the work being done at the site by the Jal Nigam.

8. It appears that this letter has been sent by way of abundant precaution because the assessed also must have known that its case is going to become time-barred and it perhaps wanted to protect itself against any adverse action by the revenue.

9. However, without going into this issue, it may be noted that the assessing officer as well as the Commissioner (Appeals) took the view that service was effected on the assessed and that the proceedings were validly initiated.

10. In appeal, the Tribunal noted the serious dispute raised by the assessed with regard to the notice dated 30-10-2002 and also noted that the assessing officer had not dealt with the issue and the CIT (Appeals) had not given any cogent reason for deciding against the assessed on this issue. The objections raised by the assessed made it incumbent upon the revenue to bring something on record to show that the notice was in fact served upon the assessed on 30-10-2002 as contended. The Tribunal was of the view that the revenue had failed to discharge the onus that lay upon it.

11. We have examined the copies of the notices issued by the Assessing Officer and find that the notice was issued at the very last minute. Since the office of the assessed was closed, no efforts were made by the assessing officer to find out the whereabouts of the assessed to serve it but a short cut was taken by the Inspector who resorted to affixation, which was carried out in the absence of any independent witness. It appears to us that the entire exercise of sending the Inspector and resorting to affixation was carried out only to ensure that the case does not become time-barred, knowing fully well that the notices have been issued at the very last minute and could not have been served on the assessed without undertaking some out of the ordinary exercise as has been done in the present case.

12. The assessed denied having received the notice and gave a reason for it, that is, that the entire area was blocked due to some work carried out by Jal Nigam but this reason has not been taken into consideration by assessing officer.

13. Under the circumstances, we do not find any error in the view that has been taken by the Tribunal. In any event, we do not think that this issue raises any

substantial question of law.

Dismissed.