(2009) 08 DEL CK 0244

In the Delhi High Court

Case No : IT Appeal No. 1171 of 2008

Commissioner of Income Tax APPELLANT

Vs

Eghan Holdings (P.) Ltd. RESPONDENT

Date of Decision : 31-08-2009

Acts Referred:
General Clauses Act, 1897 — Section 27
Income Tax Act, 1961 — Section 148

Citation : (2009) 08 DEL CK 0244

Hon'ble Judges : Valmiki J Mehta, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Prem Lata Bansal, for the Appellant; Kaanan Kapoor, for the Respondent

Final Decision : Dismissed

Judgement

1. Notice u/s 148 of the income tax Act, 1961 (for short, the ''Act'') was issued by the Assessing Officer on 29-1-2004. It was sent at 438,

Mount Kailash Towers, East of Kailash, New Delhi (hereinafter referred to as the ''old address''). By that time, the assessee had shifted from the

said address to N-118, Panchsheel Park, New Delhi (hereinafter referred to as the ''new address''). Return for the assessment year 2003-04 was

also filed on 28-11-2003, i.e. before the issue of the aforesaid notice on 29.1.2004, showing the new address. However, not a single

communication was sent at that address and further steps for serving the notice u/s 148 of the Act were also taken showing the old address.

Commissioner (Appeal), in these circumstances, held that no valid notice was served upon the assessee u/s 148 of the Act. The entire discussion in

this behalf, in appeal, is summarized by the ITAT in para 8 of its order, relevant portion whereof makes the following reading:-

8. We have carefully considered the matter. We have also perused the record produced by the department. In our humble opinion, the CIT (A)

has taken the correct view of the matter in holding that there was no valid service of notice u/s 148 and hence the reassessment proceedings are

null and void. The first notice issued on 29-1-2004 by speed-post was said to have been served on the old address at East of Kailash. There is no

proof of service on record. Even otherwise, this is not valid service because the assessee had already filed its return for the assessment year 2003-

04 on 28-11-2003 and in this return the address shown was Panchsheel Park. Thus, the record of the department already contained the new

address of the assessee, before issuing the be-notice u/s 148 it was expected of the Assessing Officer to have checked up if there was any change

of address, because valid service of a notice of reopening the assessment is a jurisdictional matter and this is a condition precedent for a valid

reassessment. The contention of the learned counsel for the assessee that the Act does not provide for a formal intimation of the change of address

and therefore the only place where one would find if there has been a change in the address is the return of income (for later years) contains force.

So far as the presumption to be drawn u/s 27 of the General Clauses Act is concerned, it can be drawn only if the notice is properly addressed

which is not the case here. As already noted, it was sent to the old address. Further, in the letter dated 20-11-2004 written to the Assessing

Officer the assessee has denied service of the notice u/s 148. Hence even if there is scope for drawing a presumption, the assessee has come

before the Assessing Officer and denied service. The notice served by affixture is also not valid service because it was done at the old address,

which is not the last-known address, as the new addresses already been intimated to the department in the return of income filed for the

assessment year 2003-04 and that is the last-known address....

2. Learned counsel for the Revenue argued that no doubt in return, filed on 28-11-2003 for the assessment year 2003-04, on the first page new

address is given, the assessee had also shown the old address in the annexure to the said return showing ''computation of assessable income''.

However, learned counsel for the assessee had explained that the assessee had sold and disposed of the old premises at East of Kailash by a sale deed and even given the possession to the purchaser on 3-9-2003. Affidavit to that effect is filed along with the copy of the sale deed.

3. After hearing the arguments at length and going through various documents, we gather the impression that it may be a case of bona fide mistake

on the part of the Assessing Officer. However, a valuable right accrued to and, furthermore, tax effect only Rs. 4,13,210 (as per the CBDT

circular, appeals with tax effect upto Rs. 4,00,000 are not to be filed).

4. Going by these considerations, we are of the opinion that the aforesaid findings need no interference in the present appeal. Dismissed.

