(1985) 01 AHC CK 0050

In the Allahabad High Court

Case No : Income Tax Ref. No. 311 of 1980

COMMISSIONER OF INCOME TAX — APPELLANT

Vs

HABIBULLAH. — RESPONDENT

Date of Decision : 23-01-1985

Acts Referred:
Income Tax Act, 1961 — Section 256

Citation : (1985) 49 CTR 98 : (1985) 21 TAXMAN 392

Hon'ble Judges : Ojha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

JUDGMENT : Ojha, J. - A reference was made by the Tribunal, Allahabad Bench, Allahabad, at the instance of the Commissioner, Kanpur, to this court under s. 256(1) of the IT Act, 1961, (the Act), and the said reference was returned unanswered by this court on 18-2-1982, on the ground that in spite of several opportunities being granted in this behalf, the applicant had not supplied the necessary copies of the paper book. Thereafter, the present application was made on 7-10-1983, i.e., after about one year and eight months of the reference being returned unanswered, with the prayer for recalling the order dt. 18-2-1982. The application was required to serve the assessee opposite party with the notice of this application and to file an affidavit of service. Notwithstanding several opportunities being given in this behalf, no affidavit service was filed. Ultimately, an affidavit of one Sri K. K. Gupta was filed on 12-7-1984, stating that on 1-3-1984 an attempt was made to serve the notice on the assessee at his residence, but it was discovered that the assessee was at present residing in London and, consequently, the notice was affixed on the main door of the assessees residence. The service of notice, however, was not found to be sufficient and a Division Bench of this court on the same date, i.e., 12-7-1984, granted one months further time to the applicant to serve the assessee. Thereafter, the case was listed on several dates with the report that the requisite affidavit of service has not been filed. When the case was listed today, another affidavit of one Shri K. K. Srivastava sworn on 29-10-1984 has been filed, wherein it has been stated that an attempt was made to serve the assessee on 27-10-1984 with the notice of the case but the deponent was informed that the assessee along with his family members had gone away to London and was there since January, 1982, and there was no likelihood of their return within reasonable time and that a copy of the notice was affixed on the outer door of the residence of the assessee. In regard to this affidavit, it may be pointed out that on 16-11-1984, apparently notwithstanding this affidavit which was not filed on that date, a statement was made by the counsel for the applicant that the London address of the assessee could not be ascertained so far. He prayed for and was granted six weeks further time to serve the assessee after finding out his address and file an affidavit of service. In place of doing so, the affidavit mentioned above, sworn on 29-10-1984, has been filed today. Since this court, by an order dt. 12-7-1984, has already taken the view on the basis of a similar affidavit that service of notice was not sufficient, we find no good ground on the basis of the present affidavit to hold to the contrary. Since the assessee has gone to London and there is no possibility of his coming back in the near future, the said affixation can hardly be taken to be sufficient service of notice of this application. In these circumstances, this application for restoration is dismissed.