

(2007) 08 DEL CK 0235
In the Delhi High Court
Case No : ITA 1547 of 2006

Commissioner of Income Tax

APPELLANT

Vs

Rajesh Kumar Sharma

RESPONDENT

Date of Decision : 13-08-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 5 Rule 12, Order 5 Rule 13, Order 5 Rule 14, Order 5 Rule 15, Order 5 Rule 9(5)
Income Tax Act, 1961 — Section 142(1), 143(2), 147, 148, 282(1)

Citation : (2008) 214 CTR 547 : (2008) 1 ILR Delhi 422 : (2009) 311 ITR 235 : (2007) 165 TAXMAN 488

Hon'ble Judges : Madan B. Lokur, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : P.L. Bansal, for the Appellant; Salil Aggarwal and Prakash Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Revenue is aggrieved by an order dated 17th March, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench "F" in I.T.A. No. 4937/Del/2004 relevant for the Assessment Year 1996-97.

2. According to the Revenue a notice was sent to the assessed u/s 147/148 of the Income Tax Act, 1961 ("Act") on the ground that the Assessing Officer had reason to believe that income of the assessed had escaped assessment. The case of the assessed was that he had not received any such notice. The further case of the assessed was that it was only when he received a notice u/s 142(1) and 143(2) of the Act that he came to know that a notice had been issued to him u/s 147/148 of the Act. The assessed mentioned this in his letter but nevertheless filed a return under protest.

3. Two issues arose before the Tribunal in view of the contentions urged by the parties. The first was whether the notice u/s 147/148 of the Act was actually received by the assessed when it was sent through the process server. Secondly,

whether the notice u/s 147/148 of the Act was received by the assessed when it was sent through speed post.

4. In so far as the first issue is concerned, there is no dispute that the notice was received by one Lalmani. According to the assessed Lalmani Shukla is an employee of the assessed but not Lalmani. Without going into this controversy, and even assuming that Lalmani is an employee of the assessed, the question is whether receipt of the notice by him is receipt of the notice by the assessed.

5. Section 282(1) of the Act provides that a notice or requisition under the 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. The provisions of Order V of the CPC, more particularly Rules 12 to 15 are relevant in so far as the present Appeal is concerned.

6. Order V Rule 12 of the CPC provides that wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient. Rules 13, 14 and 15 form a part of the same scheme. A joint reading of these Rules suggest that if a summon is accepted by a person who is authorised to do so, then only can it be said that the defendant (or the assessed in this case) has received the summons or that that service is good service.

7. In so far as the present Appeal is concerned there is nothing to suggest that Lalmani was in any manner authorised to receive any summons on behalf of the assessed. It was never the case of the Revenue that Lalmani was authorised to accept any notice on behalf of the assessed or was an agent of the assessed who was entitled to receive the notice u/s 147/148 of the Act. This being the position, it cannot be held that receipt of the notice by Lalmani amounted to service of the notice on the assessed.

8. As far as the second contention is concerned, with regard to service of the notice by post, the proviso to Order V Rule 9(5) of the CPC provides that the summons must be properly addressed and sent by registered post. In the present case, the notice was sent by speed post at the following address as per the postal receipt:

SH R K PROP M/S KAROL BAGH

NEW DELHI, PIN 110065

9. Clearly, the above is not the address of the assessed. It would have been a different matter altogether if the Revenue had been able to show from the envelope that it was addressed to the correct person but the receipt prepared by the postal department was incomplete. However, for proving this, the onus would have been on the Revenue, particularly when the assessed had categorically deemed receipt of the notice. The Revenue did not discharge this burden but placed reliance only upon the receipt, which as we have noted hereinabove does not give the correct or complete address of the assessed. Under no

circumstances, Therefore, can it be said that the notice was correctly addressed to the assessed.

10. It was submitted by learned Counsel for the Revenue that the envelope did not return with any remark to the effect that it was undelivered and so it must be presumed that it was actually served upon the assessed.

11. We are not in position to make any such assumption because of the categorical stand of the assessed that he had not received the notice. The burden was entirely upon the Revenue to show that the notice was dispatched to the correct address. It is only then that such a presumption could have been made. But learned Counsel for the Revenue has not been able to show that the envelope containing the notice was correctly addressed. We are, Therefore, not inclined to accept this contention of learned Counsel for the Revenue.

12. It was finally contended that the assessed presented himself in the proceedings before the Assessing Officer. However, as we have noted above, the assessed appeared before the Assessing Officer in response to a notice u/s 142(1) and 143(2) of the Act and not pursuant to a notice u/s 147/148 of the Act. In fact, as we have already noted, the assessed had written a letter to the assessed soon after receiving the notice u/s 142(1) and 143(2) of the Act and that he was unaware of any notice having been issued u/s 147/148 of the Act. Moreover, the assessed entered appearance and filed his return under protest making it abundantly clear that he had not received the notice u/s 147/148 of the Act. This argument does not, Therefore, advance the case of the Revenue.

13. No substantial question of law arises. The appeal is dismissed.