

(1987) 03 MAD CK 0047

In the Madras High Court

Case No : Tax Case Petition No. 358 of 1986

Commissioner of Income Tax

APPELLANT

Vs

Subramanian and Co.

RESPONDENT

Date of Decision : 02-03-1987

Acts Referred:

Income Tax Act, 1961 — Section 144B

Citation : (1989) 180 ITR 149

Hon'ble Judges : M.N. Chandurkar, C.J;M. Srinivasan, J

Bench : Division Bench

Advocate : N.V. Bala Subramanian, for the Appellant; K.N. Ramani, for I. Subramanian, for the Respondent

Judgement

M.N. Chandurkar, C.J.—In view of the confusion which appears in the order of the Tribunal which has obviously led the Revenue to file this application u/s 256(2) of the Income Tax Act, 1961, it becomes necessary to pass a slightly detailed order.

2. The main question before the Tribunal was the meaning of the word "forward" in section 144B of the Act, which requires the Income Tax Officer in certain circumstances to "forward a draft of the proposed order of assessment... to the assessee". The Department's case was that the draft order was forwarded on March 30, 1982. Admittedly, the order was received on April 5, 1982, by the assessee. When the matter reached the stage of the Tribunal, the Tribunal referred to the contention of the assessee that the expression "forward" includes the fact of service also. This contention, the Tribunal positively negated, by observing as follows :

"... While we do not find any substance in the assessee's contention that the expression "forward" should include the fact of service also on the assessee, there seems to be some force in the contention that in the facts of this particular case it could be said that the draft order was forwarded only after 31st day of March, 1982."

3. The above observation proceeded on the footing that though the assessee's contention that the word "forward" must be equated with service had to be rejected, in the case of the assessee the draft order was not forwarded before March 31, 1982. Having rejected the contention that the word "forward" should be equated with service, the Tribunal reiterated this view in the later part of the same order in the following observations :

"We, therefore, consider that the expression "forward" u/s 144B(b) merely would mean putting the draft order in the process of communication to the assessee and it will not include the requirement of actual service of the assessee."

4. These observations can leave no one in doubt that the Tribunal accepted the construction to be placed on the word "forward" as contended by the Revenue that it is not to be equated with service and that it is enough if the draft order is put in the process of communication. What is, however, important is that having thus laid down the correct meaning of the word "forward", the Tribunal proceeded further to observe that even the forwarding of the draft order has been after March 31, 1982, as will be clear from the following observations :

"From the facts of this particular case, however, it is obvious that even the forwarding of the draft order has been made after 31st of March, 1982. The mere fact that the order itself is dated 30th March, 1982, does not comply with the requirement of the order being forwarded. It must be noted that the draft order was not sent by the Income Tax Officer through post and if he had done so before 31st March, 1982, then there may be justification for holding that he has forwarded the order within the time though it maybe received by the assessee after the date allowing time for transmission of the order by the postal authorities."

5. These observations, therefore, indicate that the Tribunal proceeded on the footing that the order was put in the process of communication only after March 31, 1982. However, an apparently contrary observation was made by the Tribunal at the end of paragraph 23 of the order which has given rise to the present petition. The finding is as follows :

"The Income Tax Officer should, therefore, have taken adequate steps to see that the draft order was served on the assessee within time, before 31st of March, 1982. The service on 5th April, 1982, is clearly out of time."

6. These observations were preceded by the observations that the Income Tax Officer, however, has chosen to send the order through the process-server of the Department but that no material was placed to show that the Income Tax Officer took steps to ensure that the process-server concerned also served the order within time. Now, undoubtedly, the later observations quoted above are likely to be misunderstood as indicating that the Tribunal held that the word "forward" must mean service of the order. The entire order of the Tribunal has to be read harmoniously and the observations which have been made in the concluding portion of the order were made only on the facts of the case before the Tribunal,

because they took the view that the order not having been sent through post, the Income Tax Officer should have taken care to see that the order was served on or before March 31, 1982. Notwithstanding this observation, the correctness of which really does not arise in this petition, the order of the Tribunal unequivocally lays down the meaning of the word "forward" as putting in the process of communication. Now, if that is the meaning which the Tribunal has given, surely the question as to whether the draft orders should be served within the time limit does not arise out of the order of the Tribunal.

7. The correctness of the view which the Tribunal has taken that the order was forwarded after March 31, 1982, is not put in issue in any question. That finding is not challenged. Therefore, even assuming for a moment that on the facts of the present case, the Tribunal has taken the view that the order should have been served before March 31, 1982, the question as suggested does not at all arise out of the order of the Tribunal, since the Tribunal has decided that the meaning of the word "forward" is only "to put in process of communication". That is the meaning which was canvassed by the Revenue.

8. In this view of the matter, the petition is dismissed with costs of Rs. 250.