(2008) 03 DEL CK 0145

In the Delhi High Court

Case No : ITA No. 80 and 403 of 2007

Nulon India Ltd. APPELLANT

Vs

Income Tax Officer RESPONDENT

Date of Decision : 24-03-2008

Acts Referred:

Income Tax Act, 1961 — Section 143(2)

Citation : (2008) 216 CTR 142 : (2010) 323 ITR 681 : (2009) 183 TAXMAN 229

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

Bench : Division Bench

Advocate : K.R. Manjani, for the Appellant; R.D. Jolly, for the Respondent

Judgement

V.B. Gupta, J.—Present appeal has been filed by the assessed challenging the impugned order dated 25th August, 2006 passed by the Income Tax Appellate Tribunal Delhi Bench "E" (for short as "Tribunal") in ITA No. 152/Del/2006 for the assessment year 2001-02 vide which the appeal filed by the assessed against the order passed by Commissioner of Income Tax (Appeals) [for short as CIT (A)] was dismissed.

2. The substantial question of law which arises for consideration in this case is:

Whether notice u/s 143(2) of the Income Tax Act, 1961, in this case has not been served within the mandatory period as prescribed under the law?

3. The brief facts of this case are that the assessed filed the return of income on 31st October, 2001. The Assessing Officer issued notice dated 29th October, 2002 u/s 143(2) of the Income Tax Act, 1961 (for short as "Act"). The same was sent through speed post on 30th October, 2002 and it was issued at the address mentioned in the return of income being Nulon House, 10th Mile Stone, Mathura Road, New Delhi. The notice was redirected at A-74, Sector- 5, Noida and it was served at the redirected address on 6th November, 2002.

4. The Assessing Officer as well as CIT(A) held that the notice was issued at the

address mentioned in the return and the change in address was not notified by the assessed and, thus, there is valid service of notice within the time prescribed and hence assessment made pursuant to the said notice is also valid.

5. The Tribunal vide impugned order held that the notice has been sent within the period of limitation and hence the assessment made pursuant to the such notice is valid assessment.

6. It has been contended by learned Counsel for the Petitioner that there was no material before the authorities in support of service on 31st October, 2002 and the redirection could at all be done on 3rd November, 2002, the other date indicated by the post office on the envelop, in that case the service cannot be taken before 3rd November, 2002 and since the notice was served after mandatory period, the assessment in question cannot be sustained.

7. On the other hand, it has been argued by learned Counsel for the Revenue that notice u/s 143(2) was issued on 29th October, 2002 and has been sent by speed post on 30th October, 2002 and it has been received at the given address of the assessed on 31st October, 2002. Thereafter at the instance of the assessed, it was redirected at the address of Noida. So, notice in question has been served upon the assessed within the prescribed period.

8. As per material placed on record, the notice in question has been dispatched on 30th October, 2002 and thereafter it has been redirected to the Noida address of the assessed. There is nothing on record to show as to on which date this notice was received at the given address of the assessed and on which date the same was redirected.

9. As per order of the CIT(A) placed on record, the Assessing Officer was asked for comments and vide its letter dated 12/20th October, 2004, the Assessing Officer stated:

The notice was served by speed post which must be delivered to the assessed within 24 hours, that is, by morning of 31st October

10. So, the Assessing officer is also not sure nor specific as to when the notice in question has been served upon the assessed. It is only a presumption that notice which have been sent by speed post on 30th October, 2002, must have been delivered to the assessed by 31st October, 2002. There is no presumption under the law that any notice sent by speed post must have been delivered to the assessed within 24 hours. Moreover, there is nothing on record to show as whose instance the notice was redirected and sent at the address of Noida.

11. So, from the material available on record, we come to the conclusion that no notice u/s 143(2) of the Act, which is mandatory requirement of law, have been served upon the assessed within prescribed period.

12. Under the circumstances, the appeal filed by the assessed is allowed and the impugned order passed by the Tribunal is set aside.

13. The substantial question of law is, thus, answered in the affirmative, in favor of the assessed and against the Revenue.

14. Appeal stands disposed of.