

(1983) 12 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 510 of 1980

RAMESH KHOSLA

APPELLANT

Vs

Income Tax OFFICER, DISTRICT-I(I), JULLUNDUR, AND
ANOTHER

RESPONDENT

Date of Decision : 23-12-1983

Acts Referred:

Evidence Act, 1872 — Section 114
General Clauses Act, 1897 — Section 27
Income Tax Act, 1961 — Section 139, 143, 156, 217, 220

Citation : (1985) 41 CTR 138 : (1985) 154 ITR 556 : (1984) 17 TAXMAN 317

Hon'ble Judges : Tiwana, J

Bench : Division Bench

Judgement

TIWANA J. - The petitioner impugns the notice dated February 6, 1980, (annex. P-5) whereby Tax Recovery Officer, respondent No. 2, has asked him to show cause as to why for the recovery of Rs. 3,16,112 as arrears of Tax under various sections of the I.T. Act, 1961 (for short, "the Act"), for the assessment years 1961-62 to 1968-69, he be not arrested and committed to civil prison. Challenge is on the short ground that no notice of demand of any amount of tax for any of the years noted above was served on him in terms of s. 156 of the I.T. Act and in the absence of the same, he cannot be styled as an "assessee in default" within the meaning of s. 220(4) of the Act. As opposed to this, the stand of the respondent authorities is that the petitioner was duly served with all the demand notice for the above-noted years and he having defaulted in the payment of tax due, the course adopted by the authorities for the recovery of the same, cannot possibly be assailed. As per these authorities, the following are the details of the method and manner in which the petitioner was served with the demand notices.

The demand notice along with the assessment order for the year 1961-62 was served on him through registered A.D. post, vide office despatch register No. 3539 dated February 19, 1971. Similarly, the penalty order dated register No.

31. 1973, and the demand notice for Rs. 20,000 pursuant thereof under s. 271(1) (c) of the Act for this year was served on the petitioner in the same manner; whereas the first registered cover is presumed to have been duly delivered to the petitioner, the later was received back in the Income Tax Office on April 10, 1973, with the report in red ink "refused". Two other penalty orders passed under s. 271(1)(a) and 273 of the Act for the same very assessment year for Rs. 1,180 and Rs. 300, respectively, along with the demand notices were sent to the petitioner to his usual address, vide despatch register No. 17971 dated March 28, 1973, but this registered cover too was received back with the postal endorsement "Inkari Hai". Later, these very notices were sent to the petitioner through the process server and though he himself was not found present on the spot, yet these were received by Mr. Ram Kumar, an employee of the petitioner-concern, i.e., Khosla Engineering Company, and in his presence another copy of the notice was affixed on the outer gate of the factory.

For the year 1962-63, the demand notice along with the assessment order showing surcharge and interest under ss. 139(8) and 217 was served on the petitioner through registered post, vide office despatch register No. 1146 dated March 18, 1970. Since the acknowledgment slip was not received back, it is taken to have been delivered to the address, i.e., the petitioner. Still later, the demand notice for the assessment years 1966-67 and 1967-68 in a single cover, vide office dispatch register no. 1146 to the petitioners Chandigarh address and the same was duly received and acknowledged by somebody on that address on March 20, 1970, and the acknowledgment slip is available on the records of the case for the assessment year 1967-68. Similarly, the penalty orders passed under ss. 271(1)(a) and 273 on June 16, 1971, were dispatched to the petitioner, vide No. 514 and are [presumed to have been delivered to him.

For the assessment year 1964-65, the assessment order dated January 27, 1969, was sent along with the demand notice to the petitioner to his address "C/o. M/s. Khosla Engineering Works, Kapurthala" and it was duly received on his behalf by the accountant of the firm of February 14, 1969. Similarly, two penalty orders dated January 25, 1971, creating demands of Rs. 2,633 dated February 3, 1971. That registered cover was never received back in the office and is thus for 1968-69 was presumed to have been duly served on the petitioner.

Demand notice for Rs. 61,956 for the year 1966-67 finalised February 26, 1970, was despatched to the petitioner, vide No. 1146 along with the demand notices for the assessment years 1962-63, 1966-67 and 1967-68, and the acknowledgment slip as already indicated above is available on the records of the case for the assessment year 1967-68. Similarly demand notice for the penalty imposed under s. 271(1)(b) for a sum of Rs. 10,000 dated June 29, 1971, was despatched to the petitioner, vide No. 514 and is presumed to have been duly delivered to him.

For the assessment year 1967-68, the demand notice for Rs. 17,846 was sent through registered post, vide despatch No. 1146 dated March 18, 1970. A

separate register cover containing demand notices for the assessment years 1962-63, 1966-67 and 1967-68 was also despatched to the petitioner to his Chandigarh address and it was duly received by somebody on his behalf on March 20, 1970.

Assessment order dated March 31, 1970, for the assessment year 1968-69 was sent along with the demand notice, vide registered acknowledgment due post on despatch No. 1281 dated April 30, 1970, and is presumed to have been duly received by the petitioner as the same was not received back by the office. Similarly, the order of penalty imposed under s. 271(1)(b) for this year was sent through registered post, vide despatch No. 514 dated June 16, 1971.

It is on the basis of the above material that the respondent authorities pleaded due service of the demand notices for the relevant years on the petitioner. Besides this, it is also their stand that various notices under s. 143 of the Act sent to the petitioner during the course of assessments for the years referred to above were served on him in the same manner and the petitioner always responded to those notices, but it is only in the case of the demand notices that he denies the service of the same. Like the other notices, the assessment orders and the demand notices were also sent to him by registered acknowledgment due post but, acknowledgment due post but, he, taking advantage of the fact that at most of the times acknowledgment due slips were not received back in the Income Tax office, chooses to take the stand that the said demand notices were not served on him.

It is not in dispute before me that as per s. 282 of the Act, respondent authorities could adopt any of the two alternative modes of service of the notices, i.e., by post or in the manner provided for in CPC for the service of summons. It is again the conceded position that though the words "issue" and "service" are not synonymous, yet in the light of the provisions of s. 114 of the Indian Evidence Act, 1872, and s. 27 of the General Clauses Act (10 of 1897), a notice is deemed to have been served on the addressee if it has been sent through pre-paid registered post or letter. The contention of the learned counsel for the petitioner, however, is that the presumption that can be raised against the petitioner about the due service of the notices on him is essentially rebuttable and the about the due service of the notices on him is essentially rebuttable and the moment he has averred and sworn an affidavit along with this petition that he actually never received the above said notices, the said presumption stands rebutted and the burden shifts to the departmental authorities to prove and establish that the petitioner was duly served with those notices. Having given my thoughtful consideration to the entire matter in the light of the facts and circumstances of this case, I am of the view that the petitioner has failed to rebut the presumption that he has to be raised against him about the due service of the notices.

The stand of the respondent authorities with regard to the actual posting of the notices in a registered cover as detailed above is neither disputed nor refused on

behalf of the petitioner. Further, it is needless for me elaborate in any detailed manner that even in cases where the addressee has refused to accept the registered envelopes tendered to him by the postman, he is to be imputed with the knowledge of the contents thereof and in spite of that refusal, the notice or the contents of the envelope are to be deemed to have been duly served on the addressee. For this view of mine, I seek support from the observations of their Lordships of the Supreme Court in *Har Charan Singh v. Shiv Rani* AIR 1981 SC 1284. Thus, in the instant case, the notices which have been duly despatched to the petitioner through registered post and not been received back or received back or received back as "refused" have to be taken as duly served on the petitioner. I have no hesitation in rejecting the stand of the petitioner when he says that none of these notices was received by him. Firstly, he has disclosed no reasons in his petition as to why the said notices sent to him through registered post should not have normally reached him. Secondly, it is the categorical stand of the respondent authorities that in response to all registered notices issued to him under s. 143 Act during the course of assessment of tax of the various years, he always responded to the same. Thirdly, I see a deliberate attempt on the part of the petitioner to avoid payment of tax on one pretext or the other. In the normal course, he being an assessee and a person running a well established concern as owner or proprietor, is supposed to be in touch with his tax matters. In the given circumstances of this case, it is difficult to accept his feigned ignorance of those matters for eight long years. As per the averments in the petition itself, it was in January, 1979, that he came to know that certain demands had been raised against him and on his asking, his chartered accountants inspected the relevant records in the office of the Income Tax Office, Jullundur, and after collecting the detailed information as referred to in annexure P-1 (22 items covering the entire amount of Rs. 3,16,152) addressed a letter on February 29, 1979 (annexure P-2), to the CIT, Jullundur, offering to pay the arrears of the "valid income tax demand due" in monthly instalments of Rs. 5,000 each. This approach to the Commissioner was necessitated for the petitioner because he wanted to go abroad and for that purpose he needed the I.T. Verification Certificate (I.V.C.). In reply to this letter of his, the Department agreed to accept to accept the payment in proposed instalments provided the petitioner will not dispute the validity of the demand and service of demand notices and challans on him or, in other words, accepted the genuineness of the demands against him. In spite of this correspondence and being fully aware of the details of the demands against him, he did not choose to prefer any appeal to the higher authorities against the said demands and rather after dilly dallying the matter for some time filed this petition in February 15, 1980. It cannot possibly be disputed in the light of the provisions of s. 249 of the Act that he could reasonably plead, had he been truthful, for condonation of delay in filing of these appeals or could very well treat the date of intimation or acquisition of knowledge of the demands against him as the starting point of limitation against him. He did not choose any such course apparently for the reason that he was not in mood to pay the tax due from him.

In the light of the discussion above, I am satisfied that petitioner was duly served with the notices of demand as referred to above and the respondent authorities are perfectly justified in resorting to the course they have chosen for effecting recovery of tax due from him. I thus dismiss this petition with costs which I determine at Rs. 500.