

R.K.Upadhyaya vs Shanabhai P. Patel on 28 April, 1987

Equivalent citations: 1987 AIR 1378, 1987 SCR (3) 42, AIR 1987 SUPREME COURT 1378, 1987 TAX. L. R. 681, 1987 SCC (TAX) 230, (1987) 33 TAXMAN 226, 1987 2 ALL TAX J 689, 1987 UPTC 1041, 1987 3 JT 287, (1987) 32 ELT 255, (1987) IJR 257 (SC), 1987 RAJLR 340, (1987) 2 JT 287 (SC), 1987 UJ(SC) 2 260, (1986) 86 TAXATION 5.2, 1987 TAXATION 86 (2) 5 (2), (1987) 166 ITR 163, (1987) 1 SUPREME 525, (1987) 2 SCJ 518, 1987 (3) SCC 96, (1987) 62 CURTAXREP 17

Author: Misra Rangnath

Bench: Misra Rangnath, G.L. Oza

PETITIONER:

R.K.UPADHYAYA

Vs.

RESPONDENT:

SHANABHAI P. PATEL

DATE OF JUDGMENT 28/04/1987

BENCH:

MISRA RANGNATH

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OZA, G.L. (J)

CITATION:

1987 AIR 1378	1987 SCR (3) 42
1987 SCC (3) 96	JT 1987 (2) 287
1987 SCALE (1) 1007	

ACT:

Income Tax Act, 1961/Income Tax Act, 1922--Sections 147, 148 and 149/Section 34 Notice for reassessment--Issuance or--'Issue of notice' and 'service of notice'---Distinction between--Reassessment not to be made until there has been service-Requirement of issue of notice satisfied when a notice is actually issued.

HEADNOTE:

The respondent challenged the notice for reassessment

issued under s. 147(b) of the Income Tax Act, 1961 for the assessment year 1965-66. The High Court quashed the notice holding that the action of the Income Tax Officer was barred by limitation prescribed by the Act.

Allowing the appeal of the Revenue,

HELD: 1. The scheme of the 1961 Act so far as notice for reassessment is concerned is quite different. What used to be contained in s. 34 of the 1922 Act has been spread out into three sections, being ss. 147, 148 and 149 of the 1961 Act.

2. A clear distinction has been made out between "issue of notice" and "service of notice" under the 1961 Act. Section 149 prescribes the period of limitation. It categorically prescribes that no notice under s. 148 shall be issued after the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of assessment. Once a notice is issued within the period of limitations, jurisdiction becomes vested in the Income Tax Officer to proceed to reassess. The mandate of s. 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is actually issued.

Banarsi Debi & Anr. v. L T.O. District IV, Calcutta & Ors., 53 ITR 100; Janni v. Indu Prasad Bhat, 72 ITR 595 and C.I.T. v. Robert, 48 ITR 177, distinguished.

In the instant case, notice was issued within the prescribed period

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of limitation as March 31, 1970 was the last day of that period. Service under the new Act is not a condition precedent to conferment of jurisdiction in the Income Tax Officer to deal with the matter but it is a condition precedent to making of the order of assessment. The High Court lost sight of the distinction and under a wrong basis felt bound by the judgment in Banarsi Debi & Anr. v. L. T. O., District IV, Calcutta & Ors., (53 ITR 100). As the Income Tax Officer had issued notice within limitation the order of the High Court is vacated.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 544 of 1975.

From the Judgment and Order dated 20.8. 1973 of the Gujarat High Court in Special Civil Application No. 631 of 1970.

C.M. Lodha and Miss Subhashini for the Appellant. The Judgment of the Court was delivered by RANGANATH MISRA, J. This is an appeal by the Revenue by special leave and is directed against

the judgment of the Gujarat High Court dated August 20, 1973 in a writ petition. The High Court quashed the notice for reassessment issued under section 147(b) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') for the assessment year 1965-

66. In spite of service of notice, the assessee respondent has not appeared.

The High Court has quashed the notice by accepting the assessee's contention that the action of the Income-tax Officer was barred by limitation prescribed by the Act. There is no dispute that the notice in this case under section 147(b) of the Act was issued by registered post on March 31, 1970, and was received by the assessee on April 3, 1970. To the facts of the case, section 147(b) of the Act applies. The two relevant provisions are in sections 148 and 149 of the Act which provide:

"148(1)--Before making the assessment, reassessment or recomputation under section 147, the Income-tax Officer shall serve on the assessee a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 139; and the provisions of this Act shall, so far as may be, apply accordingly as if the notice were a notice issued under that sub-section.

(2).....

"149(1) --No notice under section 148 shall be issued,

(a).....

(b) In cases falling under clause (b) of section 147, at any time after the expiry of four years from the end of the relevant assessment year.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151."

The High Court relied upon the decision of this Court in the case of Banarsi Debi & Anr. v. 1. T. O., District IV, Calcutta & Ors., 53 ITR 100 where the validity of a notice under section 34(1) of the Income-tax Act, 1922 and the scope of section 4 of the Income-tax (Amendment) Act of 1959 by which sub-section (4) was introduced into section 34 were considered. This Court indicated, keeping the provisions of section 34 in view, that there was really no distinction between "issue" and "service of notice". Section 34, sub-section (1) as far as relevant provided thus:-

"34(1) If--

(a).....

(b) he may in cases falling under clause (a) at any time within 8 years and in cases falling under clause (b) at any time within four years at the end of that year, serve on the assessee, and may proceed to assess or reassess such income

....."

Section 34, conferred jurisdiction on the Income-tax Officer to reopen an assessment subject to service of notice within the prescribed period. Therefore, service of notice within limitation was the foundation of jurisdiction. The same view has been taken by this Court in *Janni v. Indu Prasad Bhat*, 72 ITR 595 as also in *C.I.T. v. Robert*, 48 ITR 177. The High Court in our opinion went wrong in relying upon the ratio of 53 ITR 100 in disposing of the case in hand. The scheme of the 1961 Act so far as notice for reassessment is concerned is quite different. What used to be contained in section 34 of the 1922 Act has been spread out into three sections, being sections 147, 148 and 149 in the 1961 Act. A clear distinction has been made out between 'issue of notice' and 'service of notice' under the 1961 Act. Section 149 prescribe the period of limitation. It categorically prescribes that no notice under section 149 shall be issued after the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of assessment. Once a notice is issued within the period of limitations, jurisdiction becomes vested in the Income-tax Officer to proceed to reassess. The mandate of section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is actually issued. In this case, admittedly, the notice was issued within the prescribed period of limitation as March 31, 1970, was the last day of that period. Service under the new Act is not a condition precedent to conferment of jurisdiction in the Income-tax Officer to deal with the matter but it is a condition precedent to making of the order of assessment. The High Court in our opinion lost sight of the distinction and under a wrong basis felt bound by the judgment in 53 ITR 100. As the Income-tax Officer had issued notice within limitations, the appeal is allowed and the order of the High Court is vacated. The Income-tax Officer shall now proceed to complete the assessment after complying with the requirements of law. Since there has been no appearance on behalf of the respondents, we make no orders for costs.

A.P.J.
allowed.

Appeal