The Pr. Commissioner Of Income Tax - 15 vs Shri Harish Bhasin on 9 December, 2024

Author: Yashwant Varma

Bench: Yashwant Varma, Dharmesh Sharma

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ ITA 569/2023
THE PR. COMMISSIONER OF
INCOME TAX - 15 .....Appellant
Through: Mr. Ruchir Bhatia, SSC wit
Mr. Anant Mann, JSC & Mr.
Abhishek Anand, Adv.
versus

SHRI HARISH BHASIN
Through:

15
+ ITA 570/2023
THE PR. COMMISSIONER OF
INCOME TAX - 15 .....Appellant
Through: Mr. Ruchir Bhatia, SSC wit
Mr. Anant Mann, JSC & Mr.
Abhishek Anand, Adv.
versus

SHRI HARISH BHASIN
Through:

16
+ ITA 572/2023
THE PR. COMMISSIONER OF INCOME
TAX - 15 .....Appellant
Through: Mr. Ruchir Bhatia, SSC wit
Mr. Anant Mann, JSC & Mr.
Abhishek Anand, Adv.
versus

SHRI HARISH BHASIN
Through:

ITA 569/2023

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17

\+ ITA 574/2023
THE PR. COMMISSIONER OF INCOME
TAX -15 .....Appellant
Through: Mr. Ruchir Bhatia, SSC wi
Mr. Anant Mann, JSC & Mr.
Abhishek Anand, Adv.
versus

SHRI HARISH BHASIN
Through:

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE DHARMESH SHARMA
ORDER

% 09.12.2024

1. These appeals which pertain to Assessment Years1 2006-07 [ITA 569/2023 and ITA 570/2023] and 2007-08 [ITA 574/2023], came to be admitted in terms of our order of 07 November 2024 on the following solitary question of law:-

> □2.1 Whether the Ld. ITAT has erred in holding that non recording in the order sheet of deemed service of notice by the Assessing officer upon not receiving back the unserved notice within 30 days of issue of notice will make the service of notice invalid and consequent assessment void?

2. The principal issue which appears to have been urged for the consideration of the Income Tax Appellate Tribunal2 was in respect of the service of the notice referable to Section 148 of the Income Tax Act, 19613. The Tribunal while dealing with this issue has observed as follows:-

> AY Tribunal This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/12/2024 at 04:43:09 □12. In order to decide the aforesaid issue, assessment record were summoned and perused by the Bench with the assistance of the ld. AR for the assessee as well as ld. DR for the Revenue and copies of notices along with copy of dispatch register were retained on the file for ready perusal.
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> 13. For ready perusal, para 1of the assessment order for AYs 2006-07, 2007-08 & 2008-09, identically worded, containing facts as to issuance and service of notice u/s 148 is extracted as under:-

"Original assessment in this case was completed under section 144 by the Assistant Commissioner of Income Circle- 13, New Delhi on 27.12.2010. The assessee did not file a return of income for the assessment year 2006-07 under section 139(1) of the Income Tax Act, 1961. The proceedings u/s 147 were initiated vide notice dated 05.06.2009 However, no return was filed in response to this notice u/s 148 also. Notice u/s 142(1) were also issued and served on the assessee on various dates. However no response was received from the assessee. A final opportunity was given to the assessee vide letter dated 22.09.20210 to appear on 29.09.2010. No one appeared on this date and no reply was filed with this office."

14. Perusal of the aforesaid narration given by the AO as to issuance of service of notice dated 05.06.2009 u/s 148 shows that it does not contain facts if the notice (supra) were ever served upon the assessee, it just contains the fact that notices u/s 148 were issued on 05.06.2009. When we further examine assessment record viz. order sheet prepared by the AO and dispatch register, no doubt copy of notices dated 05.06.2009 for AYs 2006-07 & 2007-08 is reportedly issued on 05.06.2009 vide dispatch register but the record is altogether silent if the said notices were served upon the assessee or received back served/unserved nor copy of acknowledgement from the postal authority acknowledging the receipt of notice is there on the file. It is settled principle of law that when the assessee has specifically challenged service of notice u/s 148 as well as u/s 142(1) since the stage of assessment it is the duty of the Revenue to prove the service of notice. .

3. As is evident from the aforesaid extracts, the assessment record as maintained by the Assessing Officer4 had borne out that although the notice had been duly dispatched on 05 June 2009, the assessee had failed to furnish a return in response thereto. It is on the aforesaid Act AO This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/12/2024 at 04:43:09 basis that it appears to have been alleged that there was no valid and effective service of the Section 148 notice. The Tribunal has found upon perusal of the dispatch register that although the same did evidence the issuance of the notice on 05 June 2009, the record was altogether silent as to whether they had been duly served, received back unserved or whether a copy of the acknowledgment existed on the record.

4. We, however, find that the Commissioner of Income Tax (Appeals)5, while dealing with this aspect had recorded as under:-

3.1.2 In terms of the appellant's contention regarding service of notice u/s 148 of the Act vide letter no. CIT(A)-23/2016-17/235 dt. 15.09.2016 the AO was asked to submit evidence of issuance of notice and service thereof in all the three years concerned and the AO was also asked to send the assessment folders which has been submitted by the AO vide his letter F.No. ACIT/CC-03/2016-

17/1906 dt. 23.09.2016. The AO has submitted copies of evidence of the postal department 'speed post booking list' dt. 12.06.2009 and 25.09.2009 which shows that the notices u/s 148 of the Act were issued and sent vide speed post nos. ED910685830 IN and ED910685843 IN for AYs 2006-07 & 2007-08 and ED896868640 IN for AY 2007-08. The assessment folders of these years have been perused by me and I do not find that these notices were returned back undelivered. In fact the AO, vide his letter F.No. ACIT/CC-3/2015-16/1594 dt. 20.10.2015 (copy of which has been filed by the appellant's AR with his submissions on 24.10.2016), had duly informed the assessee about this fact and the proof of service of notices, i.e. the speed post list mentioned above, had been given to the assessee with this letter and requested the assessee to cooperate with the assessment proceedings. It is pertinent to mention that the assessment order were sent to the same address as mentioned in this appellate order (on which the notices issued during the original assessment proceedings were issued) which were duly received by the appellant enabling him to file appeal before CIT(A)-1 New Delhi on 28.03.2011 while the assessment order was passed on 27.12.2010. Similarly, the address mentioned in the Hon'ble ITAT's order (supra) is also the same meaning thereby that notices issued by the Hon'ble ITAT at the same address were duly received by the appellant and complied with resulting in favourable order by the Hon'ble ITAT. The CIT This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/12/2024 at 04:43:10 appellant has also not contended the service of subsequent notices and letters issued by the AO during the set aside assessment proceedings mentioned herein above and has in fact submitted replies as well to the AO. All these notices and letters were also sent at the same address. Thus, it is apparent that the appellant has acknowledged receipt of certain notices and letters at his choice and objected to the receipt of notices u/s 148 of the Act issued initially in the manner it suited his interests. There is therefore no doubt that notices u/s 148 of the Act were issued in all the three years. It is settled law that notices/letters sent by speed post and not returned by the postal department unserved/undelivered is deemed service. For this I rely on the judgments in Mayawati vs CIT & others 321 ITR 349 (Del) wherein following the judgment of the Hon'ble Supreme Court in C.C.AIavi Haji vs Palapatty Muhammed (2007) 137 Comp Cas 692, (2007) 6 SCC 555 wherein the Hon'ble Supreme Court held that "in view of Sec.27 of the General Clauses at when a notice has been sent by registered post to the address of the drawer it is necessary to further aver in the complaint that in spite of the return of the notice unserved it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Until and unless the contrary is to by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business" the Hon'ble Delhi High Court held the service of notice as deemed to have been served"; V. Raja Kumari vs P. Subharama Naidu (2005) 124 Comp Cas 1, AIR 2005 SC 109 wherein it has been held that "the notice can be presumed to have been served in a case where the sender has despatched the notice by post with correct address written on it"; Har Charan Singh vs Shiv Rani AIR 1981 SC 1284 wherein it has been held that "where any Central Act or Regulation authorises or requires any document to be served by post then unless different intentions appears the service shall be deemed to be effected by properly addressing, pre-paying and posting it by registered post a letter containing the document .... Irrespective of whether any acknowledgement due is received from the addressee or not"; Color Craft v. Income-tax Officer- 16(2)(4), Mumbai [2016] 68 taxmann.com 409 (Mumbai - Trib.)

wherein it has been held that "objection as to service of notice issued under section 143(2) not served in time, could only be raised on basis of some controverting evidence/material on record and where there is no contrary material as to delivery of communication and arrangements entered into with postal authorities in this respect, service of notice can be said to be within time"; R.L. Narang vs CIT (1982) 136 ITR 108 (Del) wherein it has been held that "the Income Tax Act is a Central Act and S.282 provides for a service by post. As such the provisions of S.27 of the General Clauses Act are applicable .... in order to presume service having been effected, the document or letter This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/12/2024 at 04:43:10 should be sent by registered post"; CIT Vs Yamu Industries Ltd. (2008) 167 Taxman 67 (Del) wherein it has been held that "where notice u/s 143(2) sent by registered post to the correct address of the assessee had not been received back 'unserved' within a period of 30 days of its issuance, there was presumption under law that the said notice had been duly served upon the assessee within the period of limitation".

5. The recitals of fact which appear above have clearly not been taken into consideration by the Tribunal. As is manifest from the aforesaid extract of the order of CIT(A), the notices were issued vide speed post to the assessee but were never received back undelivered. It is in the aforesaid context that the CIT(A) had borne in consideration the provisions made in Section 27 of the General Clauses Act,18976.

6. We, in this regard bear in mind the following pertinent observations as they appear in the decision of the Supreme Court in C.C. Alavi Haji v. Palapetty Muhammed7:-

> "13. According to Section 114 of the Act, read with Illustration (f) thereunder, when it appears to the court that the common course of business renders it probable that a thing would happen, the court may draw presumption that the thing would have happened, unless there are circumstances in a particular case to show that the common course of business was not followed. Thus, Section 114 enables the court to presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the court can presume that the common course of business has been followed in particular cases. When applied to communications sent by post, Section 114 enables the court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. But the presumption that is raised under Section 27 of the GC Act is a far stronger presumption. Further, while Section 114 of the Evidence Act refers to a general presumption, Section 27 refers to a specific presumption. For the sake of ready reference, Section 27 of the GC Act is extracted below:
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> 1897 Act (2007) 6 SCC 555 This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/12/2024 at 04:43:10 □27. Meaning of service by post.--Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression □serve' or either of the expression □give' or □send' or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

14. Section 27 gives rise to a presumption that service of notice has been effected when it is sent to the correct address by registered post. In view of the said presumption, when stating that a notice has been sent by registered post to the address of the drawer, it is unnecessary to further aver in the complaint that in spite of the return of the notice unserved, it is deemed to have been served or that the addressee is deemed to have knowledge of the notice. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. This Court has already held that when a notice is sent by registered post and is returned with a postal endorsement □refused or □not available in the house or □house locked or □shop closed or □addressee not in station , due service has to be presumed. (Vide Jagdish Singh v. Natthu Singh [(1992) 1 SCC 647 : AIR 1992 SC 1604] ; State of M.P. v. Hiralal [(1996) 7 SCC 523] and V. Raja Kumari v. P. Subbarama Naidu[(2004) 8 SCC 774 :

> 2005 SCC (Cri) 393] .) It is, therefore, manifest that in view of the presumption available under Section 27 of the Act, it is not necessary to aver in the complaint under Section 138 of the Act that service of notice was evaded by the accused or that the accused had a role to play in the return of the notice unserved.
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> 7. This presumption which Section 27 constructs has neither been examined, evaluated nor borne in consideration by the Tribunal. It has, in fact, and to the contrary held that it was incumbent upon the AO to bring on record an acknowledgment of service of the notice in question. This becomes evident from a reading of the following observations as they appear in the judgment of the Tribunal:-
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> □22. To prove the service of summon, the AO during the assessment proceedings were required to bring on record that by such and such acknowledgment service of notice was effected on This is a digitally signed order.
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> The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 21/12/2024 at 04:43:10 the assessee or he was required to examine the postal authorities to prove that notice (supra) was duly served upon the assessee. But entire record maintained and produced by the Revenue is silent if service was actually affected on the assessee nor any service report or acknowledgment from the

postal department has been brought on record.

8. We are thus of the considered opinion that the Tribunal has clearly erred in holding that there was no valid service of notice. We consequently answer the question as framed in the affirmative and in favour of the Revenue.

9. The appeal shall consequently stand allowed. The impugned order of the Tribunal dated 24 February 2020 is hereby set aside. The appeal shall consequently stand revived on the board of the Tribunal to be considered and examined afresh.

10. All rights and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

DECEMBER 09, 2024/DR This is a digitally signed order.