# M.X. De Nornha & Sons vs Commissioner Of Income-Tax on 25 September, 1950

## Equivalent citations: AIR1952ALL137, [1950]18ITR928(ALL), AIR 1952 ALLAHABAD 137

## Author: V. Bhargava

## Bench: V. Bhargava

JUDGMENT

Malik, C.J.

1. This is a reference under Section 66(1), Income-tax Act. Two questions, which have been referred to us by the Income-tax Appellate Tribunal, Allahabad Bench, are as follows:

> "1. Whether, in the circumstances at the case, there was a valid service by post on the appellant as contemplated by Section 63, Income-tax Act?
>
> 2. Whether Rule 24 of the Appellate Tribunal Rules 1917, was ultra vires in the absence of a corresponding rule entitling it to re-hear the appeal when good cause was shown for default ?"

2. The assesaee is a firm carrying on business under the name and style of Messrs, M. X. de Nornha & Sons, Kanpur. The asaessee filed an appeal before the Income-tax Appellate Tribunal, Allahabad Bench. A notice was issued by the Tribunal on 19-5-1947, fixing 17-7-1947, for hearing of the appeal. The notice was sent by registered post to the address given by the assessee. The notice was taken to the office of the assessee on 23-5-1947, and it was received by one H. D. Srivastava, a clerk of the firm, who endorsed his acknowledgment under the seal of the assessee, 'for M. X. de Nornha and Sons, Kanpur'. This service was deemed to be sufficient and, on the date fixed, i. e., 17-7-1947, the case was taken up by the Tribunal. The assesses did not appear nor was there anyone on his behalf. The Tribunal, however, passed over the case that day & fixed it for the next day. On 18-7-1947, again when no one appeared on behalf of the assessee, the Tribunal passed the following order;

> "This appeal was fixed for 17-7-1947. The appellant is duly served with the notice of the date of hearing. He was absent throughout the day yesterday. We put down the appeal for to-day swatting his appearance. He has not appeared even to-day. It is past 4-45 P. M. now. No application for adjournment has also been received. In the circumstances, we dismiss this appeal for default."

After the dismissal of the appeal for default, the assessee filed an application praying that certain questions of law be referred to this Court under Section 66 (1), Income-tax Act and, along with that application, an affidavit of Shri H. D. Srivastava was also filed in which he said tbat a notice was brought during the luncheon interval when nobody else was present in the office. He received the notice but as he felt unwell, he left the office and thereafter he got high fever; and by the time he was better, the notice was lost. He further stated that he had not read the contents of the notice and had not communicated its contents to the partners of the firm. The tribunal, however, did not consider the affidavit convincing and held that it "savoured of falsehood" and rejected it as unreliable.

3. We are, therefore, left with the fact that a notice was sent by registered post to the address given by the assessee. It was received by an employee of the firm, who even used the seal of the firm, on its behalf. The question is whether these facts were sufficient to hold that there was a valid service of the notice on the assessee, as contemplated by Section 63, Income-tax Act.

4. Section 63, Income-tax Act, is divided into two sub-sections. The first subsection, so far as it is relevant to service of notices by post, runs as follows:

> "63 (1). A notice or requisition under this Act may be served on the person therein named either by post, ....
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> Sub-section (2) relevant for our purposes is as follows:
>
> "63 (2). Any such notice or requisition may, in the case of a firm ..... be addressed to any member of the firm or to the manager ..... and, in the case of any other association of individuals, be addressed to the principal officer thereof."

Learned counsel for the assessee has urged that, in the case of a firm, notice must be served either on the manager or on a member of the firm; and aa Shri H D. Srivastava was neither a manager nor a member of the firm, the notice was not duly served on the assessee firm. His argument, in short, in that Sub-section (1) of Section 63 of the Act does not apply to the case of a firm and the case of a firm must be decided in accordance with the provisions of Sub-section (2) or, in other words, Sub-section (2) governs the provisions of Sub-section (1). We do not think that this contention has any force. Subsection (1) clearly provides that a notice or requisition under the Income-tax Act may be served on the person therein named by post. The word 'person' has been defined in the General Clauses Act (X [10] of 1897) as 'including any company or association or body of individuals, whether incorporated or not.' The firm is, therefore, clearly a 'person,' as defined by the General Clauses Act which definition is applicable to the provisions of the Income-tax Act. The assessee being a firm, the service on the firm by post was all that was required, and the point for consideration is whether there was proper service on the firm or not.

5. Sub-section (2) of Section 63 makes it clear that, in the case of a firm, the notice, instead of being addressed to the firm, may be addressed to any member of the firm or to the manager. If a notice is addressed to any member of the firm or to the manager and is duly served, it will be complete compliance with the provisions of Section 63 of the Act about the service of the notice. But this does

not mean that if the notice is addressed to the firm itself and is received by a person authorised to receive it, on behalf of the firm, the notice is insufficient. So far as we can see, Sub-section (2) of Section 63 of the Act only lays down that in some cases the notice instead of being addressed to the person concerned may be addressed to his manager or partner. If a notice is sent to a firm at its principal place of business, at the address given by the assessee himself, under Section 27, General Clauses Act (x [10] of 1897), there is a presumption that there is due service of the notice. Section 27, General Clauses Act, runs as follows :

> "Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post .... 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."

The result of sending the notice by registered post properly addressed and postage prepaid gave rise to the presumption of due service of the notice. This presumption was no doubt rebuttable and it was open to the assessee to prove that the notice was not received by him.

6. Reliance is placed by learned counsel for the assessee on Rule 113, Post and Telegraph Rules, 1948, which is to the following effect:

> "113. No, registered article will be delivered to the addressee unless and until he or his agent authorised in writing has signed a receipt for it, in the prescribed form, which will be presented to him for signature by the postman who delivered the registered article."

It is urged by learned counsel for the assessee that the registered letter should not have been delivered to Shri H. D. Srivastava who was not authorised in writing to receive letters on behalf of the firm. No such allegation was made in the affidavit & we do not know whether Mr. Srivastava was or was not authorised in writing to receive letters on behalf of the firm. In any case, there, was no reliable material on the record which could rebut the presumption about proper service of the notice. We may also refer to Rule 19, Post and Telegraph Rules, 1948, which is as follows :

> "The delivery of a postal article at the house or office of the addressee or to the addressee or his servant or agent or other person considered to be authorised to receive the article according to the usual manner of delivering postal articles to the addressee is deemed to be delivery to the addressee under the Post Office Act."

We have already said that the affidavit was rejected by the Tribunal as unreliable and the presumption therefore remains unrebutted that the letter sent by registered poat properly addressed & stamped reached its destination & was duly delivered to the addressee. It was for the assessee to prove that the service of the notice on him was not according to law, or, according to the rules.

7. Learned counsel appearing on behalf of the assessee has relied on several decisions. Special reliance has been placed on the case of Commr. of Income-tax, Burma v. Dey Bros. (1935-3 I. T. R. 213). That was, however, not a case of delivery of an article by registered post and no question of presumption of proper delivery could arise. That was a case in which notice was sent for service in the manner prescribed for service of summons under the Code of Civil Procedure & the Court held that the summons had not been served as required by the provisions of the Code. The case of Commr. of Income-tax, C. P. v. Buxiram Rodmal, 1934 3 I. T. Rule 438 was a similar case. The facts of Harjibandas Gordhandas v. Bhagwandas Pursram, A.I.R. (9) 1922 Cal. 390, were entirely different. In that case, the firm having closed its business, the only mode of service available was in accordance with Order 30, Rule 3, Civil P. C. The last case is In the matter of L. C. De Souza, 54 ALL. 548. In that case, the notice sent by registered post was received by a minor son of the assessee. It was established that the minor had nearly attained the age of majority, was an intelligent person & had, on previous occasions, also received registered letters addressed to his father. On those facts, the Court held that the presumption under 8. 27, General Clauses Act, had not been rebutted.

8. Our answer to the first question, therefore, is that, in the circumstances of the case, there was a valid service by post on the appellant as contemplated by Section 63, Income-tax Act.

9. The notice, that was sent to the assessae on 19-5-1947, was, however, in the following terms : "Take notice that, in default of your appearance, the appeal will be heard and determined in your absence." There was nothing in the notice to give to the assessee the information that if the aseessee did not appear or did not engage any counsel, his case will not be heard at all and will be dismissed for default. A question of law thus arose whether, in view of the form of the notice, it was open to the Income-tax Appellate Tribunal to have dismissed the case for default on 13-7-1947, when the assessee did not appear & was not represented before it. This question is of importance to the assessee because if it is held that the Tribunal, in view of the form of the notice, might have heard the case ex parte but could nob dismiss it for default, the case will have to he reheard by the Tribunal. We, therefore, suggested that the case may be sent back to the Tribunal under Section 66 (4), Income-tax Act, for further reference on this question. Mr. Das, however, on behalf of the Department, after consulting the representative of the Department, informs us that as it is an old case & as all the facts are before us, it is not necessary to ask for further statement of the case & we may formulate the question and decide it. To this, learned counsel for the assessee also agrees.

10. The words in the notice being that the appeal will be 'heard and determined in the absence of the assessee', the Tribunal should have decided the case on merits and the dismissal for default cannot be said to be a hearing of the appeal and its determination. The word 'determination' must mean a decision on the points raised in the case and not merely an order of dismissal for default. We are, therefore, of opinion that the Tribunal erred in dismissing the appeal for default. If it wanted to have the right to dismiss the appeal for default, it ought not to have issued a notice to the assessee that if he did not appear, the case would be heard and determined in his absence. The assessee was not bound to engage counsel and he might have felt well satisfied that the merits of his case were such that the Tribunal, merely by looking into the order under appeal would decide the case, in his favour.

11. In the view that we take of this question, question No. 2 formulated by the Tribunal does not arise & we express no opinion on that question.

12. In view of the peculiar circumstances of the case, we make no orders as to costs.