HIGH COURT OF DELHI : NEW DELHI

\+ **ITA Nos. 98-101 of 2003**

% Date of Decision: May 27, 2003

\# COMMISSIONER OF INCOME-TAX ...Appellant
! Through: Ms. Premlata Bansal, Adv.

Versus

$ Dr. K.C. VERMA ...Respondent
^ Through Mr. H.K. Gangwani, Adv.

Coram:

* **HON'BLE MR. JUSTICE D.K. JAIN**
* **HON'BLE MR. JUSTICE MADAN B. LOKUR**

1. Whether the Reporters of local papers may be allowed to see the judgement?

2. To be referred to Reporter or not?

3. Whether the judgement should be reported in the Digest?

* **D.K. JAIN, J (Oral)**

CM Nos.45, 47, 49 & 50/2003

For the reasons stated in the applications, delay in re-filing the appeals is condoned.

The applications stand disposed of.

CM No.44, 46, 48/2003

Allowed, subject to all just exceptions.

The applications stand disposed of.

ITA Nos.98-101/2003

1. These four appeals by the Revenue under Section 260-A of the Income-tax Act, 1961 (for short 'the Act'), are directed against a common order dated 29 May 2002, passed by the Income Tax Appellate Tribunal, Delhi Bench, SMC-I, New Delhi (for short 'the Tribunal) in ITA Nos.4379-4381 & 4660/Del/2000, pertaining to the Assessment Years 1992-93 to 1995-96.

2. Since the issue sought to be raised by the Revenue in all the four appeals is identical, these are being disposed of by this common order.

3. Background facts giving rise to the appeals are as follows:

The respondent/assessee is a Dermatologist. Since returns of income for the said assessment years were filed by him after the expiry of the due dates, notices under Section 148 were issued to him on 23 March 1998, to regularise the returns.

Subsequently, assessment proceedings in respect of the said assessment years are claimed to have been initiated by issuing a notice under Section 142(1) of the Act on 1 March 2000, which, according to the Assessing Officer, was not responded to. Another notice is stated to have

been issued to the assessee on 23 March 2000. Since both the said notices were not responded to, best judgment assessments in respect of all the four assessment years were framed under Section 144 of the Act, on the basis of the material available on record.

Aggrieved by the additions made by the Assessing Officer to the returned income, the assessee preferred appeals to the Commissioner of Income-tax (Appeals). One of the grounds urged before the Appellate Authority was that since the assessee had not received any notice under Section 142(1) of the Act, the assessment orders passed under Section 144 of the Act, were illegal. The Commissioner (Appeals), did not agree with the assessee on the question of service of notice under Section 142(1) of the Act, but he deleted the additions made by the assessing officer to the income returned. Being aggrieved, the assessee carried the matter in further appeal to the Tribunal. By the impugned order, the Tribunal has come to the conclusion that no notice under Section 142(1) of the Act was served on the assessee and, therefore, the assessment order passed under Section 144 was un-sustainable. While holding so, the Tribunal has observed that the service of first notice by affixture was bad in as much as the procedure prescribed for effecting service by affixture was not followed by the Assessing Officer and as regards the second notice, nothing was brought on record to show that it was served on the assessee. Hence

the present appeals.

4. We have heard Ms. Premlata Bansal, learned senior standing counsel for the Revenue. Learned counsel while candidly admitting that service of first notice by affixture was not strictly in accordance with the procedure prescribed in the Code of Civil Procedure, submits that the second notice was served on the assessee through a process server, who presumably had given a report that he had served the same on the assessee. On a pointed query by the Court as to what exactly was the report of the process server, learned counsel expresses her ignorance about it. Learned counsel is unable to produce any evidence to show that any notice was, in fact, served on the assessee.

5. In this view of the matter, the finding recorded by the Tribunal to the effect that there was no service of notice on the assessee before completing the assessments cannot be faulted with. The said finding is essentially a finding of fact giving rise to no question of law, much less a substantial question of law.

6. Since no case for interference with the finding of the Tribunal on the issue of service of notice is made out, we deem it unnecessary to deal with the other issue raised by the Revenue with regard to the question of limitation in issuing notice under Section 142(1) of the Act.

7. **For the foregoing reasons, we decline to entertain the appeals and the same are, accordingly, dismissed.**

D.K. JAIN, J

MADAN B. LOKUR, J

MAY 27, 2003
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