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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 1088/2005

COMMISSIONER OF INCOME TAX Appellant
Through

Ms.Prem Lata Bansal,Advocate

versus

M/S BHAN TEXTILES P.LTD. Respondent
Through

Mr.K.R.Manjani,Advocate

CORAM:

HON'BLE MR. JUSTICE VIKRAMAJIT SEN

HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER
28.09.2006

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This appeal was admitted on the following substantial question of law:

"Whether the actual service of a notice under Section 143(2) of the Income Tax Act, 1961 as it stood before amendment, after the date prescribed in the said provision would relate back to the date of issue of the notice?"

So far as the factual matrix of the case is concerned, the Revenue is in a worse position than which obtained in *Commissioner of Income-Tax vs. Lunar Diamonds Ltd.* [2006] 281 ITR 1 (Delhi). Ms. Prem Lata Bansal, learned counsel appearing on behalf of Appellant, seeks to point out that there



was some doubt in *Commissioner of Income-Tax vs. Lunar Diamonds Ltd.* (supra) whether the notices had at all been sent or not. In the present case, however, it is the admitted case that the notice under Section 143 (2) of the Income Tax Act though issued on 27.11.1997 and dispatched on 28.11.1997 was actually received by the assessee only on 1-12-1997. The assessee had filed the return on 20-11-1996 and, therefore, time stipulated under the proviso to S.143 (2) (ii) for service of notice expired on 30-11-1997. The said proviso leaves no room for debate that the notice must be served on the assessee. In *Commissioner of Income-Tax vs. Lunar Diamonds Ltd.* (supra) the Division Bench had rejected the contention that the words 'served' and 'issued' are synonymous and are interchangeable. The Bench did not have the benefit of the decision of the Hon'ble Supreme Court in *R.K.Upadhyaya vs. Shanabhai P.Patel*, [1987] 166 ITR 163, which in fact strengthens and fortifies the position that there is a clear distinction between 'issuance of notice' and 'service of notice'. Ms.Bansal's reliance on *Tea Consultancy and Plantation Services (India) Pvt.Ltd. vs. Union of India and Ors*, [2005] 278 ITR 356 (Delhi) is to no avail since the word that had to be construed by the Division Bench in that case



was "made" and not "issued" or "served". We see no reason to adopt an approach different to the one adopted by us in *Commissioner of Income Tax v. Vardhman Estate Pvt.Ltd.* (ITA 1248/2006) decided by us on 25-9-2006.

The question framed in this Appeal is answered in the negative.

The Appeal is accordingly dismissed.

A handwritten signature in black ink, appearing to read 'Vikramajit Sen'.

VIKRAMAJIT SEN, J

A handwritten signature in black ink, appearing to read 'S. Muralidhar'.

S. MURALIDHAR, J

SEPTEMBER 28, 2006
NJ

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