



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **ITA 1248/2006**

**COMMISSIONER OF INCOME TAX, DE ..... Appellant**  
**Through Mr. R.D. Jolly, Sr. Standing**  
**Counsel with Mr. Vishnu Sharma, Adv.**

**versus**

**M/S VARDHMAN ESTATE PVT LTD ..... Respondent**  
**Through Mr. Salil Aggarwal with Mr.**  
**Prakash Kumar, Adv.**

**CORAM:**  
**HON'BLE MR. JUSTICE VIKRAMAJIT SEN**  
**HON'BLE DR. JUSTICE S. MURALIDHAR**

**ORDER**  
**25.09.2006**

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We have seen the records of ITA 1088/2005 where the following substantial question of law has been formulated:

"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?"

It is palpably evident that certain typographical errors have occurred in framing the question of law. In our view, it should read as follows:

"Whether the actual service of a notice under Section 143(2) of the Income-Tax Act, issued before the date prescribed in the said provision, would relate back to the date of the issuance of the notice?"



So far as this question is concerned it stands answered on all fours by the decision in Commissioner of Income-Tax vs. Lunar Diamonds Ltd., [2006] 281 ITR 1 (Delhi). The Bench had taken note of and rejected the contention of the Revenue that the words "served" and "issued" are synonymous and interchangeable. In other words, this Court negated the argument that the word "issued" must be read as "served". We are in respectful agreement with this view.

In the present case, the Return was filed on 31.10.2001 and in terms of Section 143(2) the notice had to be served on the assessee on or before 31.10.2002. The argument is that there were two modes of service, i.e., by Speed Post as well as by a Process Server. The date of service, so far as Speed Post is concerned, is said to be 1.11.2002, but so far as Process Server is concerned it is stated to have been effected on 31.10.2002. The Tribunal has accepted the contention of the assessee that the date of service through Speed Post was 1.11.2002. Even before us, the Appellant has not produced any material to suggest that the notice sent by Speed Post was served on any earlier date. On the other hand, it is sought to be contended that since the notice was dispatched by Speed Post on 30.10.2002, that should be the deemed date of service. We are unable to agree. So far as service by Speed Post is concerned, one point stands covered against the Revenue in Commissioner of Income-Tax vs. Lunar Diamonds Ltd. (supra).

So far as the service through the Process Server is concerned, the document which is Annexure-C to this Paper-Book had not been

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filed before the ITAT when the first Order dated 15.3.2005 came to be passed. Mr. Jolly contends that the ITAT was in error in rejecting the Rectification Application on the grounds that Annexure-C did not form part of the record of the case, and that the Tribunal ought to have called for and perused the assessment record of which the said document forms part. On a query as to whether there is any rule or regulation mandating that the ITAT call for the assessment records while considering an appeal, Mr. Jolly answers in the negative. In view of Commissioner of Income-Tax vs. Lunar Diamonds Ltd. (supra) no substantial question of law arises. 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 25, 2006

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