



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 942/2007

COMMISSIONER OF INCOME TAX

..... Appellant

Through Mr. J.R. Goel, Advocate

versus

HARISH J.PUNJABI

..... Respondent

Through Mr. Satyen Sethi with Mr. M.K. Giri, Advocate

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S. MURALIDHAR

ORDER

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. 01.10.2007

CM No. 12713/2007 (delay)

For the reasons stated in the application, the delay is condoned.

Application stands disposed of.

ITA No. 942/2007

In this appeal under Section 260-A of the Income Tax Act, 1961 ('Act'),



the Revenue is aggrieved by an order dated 20th October, 2006 passed by the Income Tax Appellate Tribunal, ('Tribunal') Delhi Bench 'D' in ITA No 4923/Del/2003 relevant for the Assessment Year 1996-97.

The Assessee was not served with the notice under Section 147 and 148 of the Act and on this factual ground, the Tribunal held that the proceedings for assessment were void.

Learned counsel for the Revenue referred to the decision of the Supreme Court in *R.K. Upadhyaya v. Shanabhai P. Patel* [1987] 166 ITR 163 to contend that there is a distinction between the service of notice and issuance of notice. In that case, there was no dispute about the fact that notice under Section 147 of the Act was issued to the Assessee by registered post on 31st March, 1970 and was received by the Assessee on 3rd April, 1970. In the instant case, however, the notice was not sent by registered post nor served upon the Assessee through any other manner whatsoever.

Reliance has also been placed to the decision of the Supreme Court in




Commissioner of Income Tax v. Jai Prakash Singh [1996] 219 ITR 73

contend that the assessment order is null and void. In that case one of the legal representatives of the deceased was served with a notice under Section 143 (2) of the Act. In the instant case, admittedly no notice has been served on the Assessee. The cited decision is distinguishable on facts.

No substantial question of law arises in this appeal.

Dismissed.


MADAN B. LOKUR, J


S. MURALIDHAR, J

OCTOBER 01, 2007

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