



*** HIGH COURT OF DELHI : NEW DELHI**

ITA No.80 & 403 of 2007

% Judgment reserved on: 17th March, 2008

Judgment delivered on: 24th March, 2008

M/S NULON INDIA LTD.

NULON HOUSE, ISHWAR NAGAR,

10TH MILE STONE,

DELHI MATHURA ROAD,

DELHI.

..... Petitioner.

Through: Mr. K.R. Manjani, Adv.

Vs.

INCOME TAX OFFICER

WARD 13(3)

NEW DELHI.

..... Respondent

Through: Mr. R.D. Jolly, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE MR. JUSTICE V.B. GUPTA

- | | |
|--|----|
| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

V.B.Gupta, J.

Present appeal has been filed by the Assessee challenging



the impugned order dated 25th August, 2006 passed by the Income Tax Appellate Tribunal Delhi Bench 'E' (for short as 'Tribunal') in ITA No.152/Del/2006 for the assessment year 2001-02 vide which the appeal filed by the Assessee against the order passed by Commissioner of Income Tax (Appeals) [for short as CIT (A)] was dismissed.

2. The substantial question of law which arises for consideration in this case is:-

“Whether notice under Section 143(2) of the Income Tax Act, 1961, in this case has not been served within the mandatory period as prescribed under the law?”

3. The brief facts of this case are that the Assessee filed the return of income on 31st October, 2001. The Assessing Officer issued notice dated 29th October, 2002 under Section 143(2) of the Income Tax Act, 1961 (for short as 'Act'). The same was sent through speed post on 30th October, 2002 and it was issued at the address mentioned in the return of income being Nulon House, 10th Mile Stone, Mathura Road, New Delhi. The notice was redirected at A-74, Sector-5, Noida and it was served at the redirected address on 6th November, 2002.



4. The Assessing Officer as well as CIT(A) held that the notice was issued at the address mentioned in the return and the change in address was not notified by the Assessee and, thus, there is valid service of notice within the time prescribed and hence assessment made pursuant to the said notice is also valid.

5. The Tribunal vide impugned order held that the notice has been sent within the period of limitation and hence the assessment made pursuant to the such notice is valid assessment.

6. It has been contended by learned counsel for the Petitioner that there was no material before the authorities in support of service on 31st October, 2002 and the redirection could at all be done on 3rd November, 2002, the other date indicated by the post office on the envelop, in that case the service cannot be taken before 3rd November, 2002 and since the notice was served after mandatory period, the assessment in question cannot be sustained.

7. On the other hand, it has been argued by learned counsel for the Revenue that notice under Section 143(2) was issued on



29th October, 2002 and has been sent by speed post on 30th October, 2002 and it has been received at the given address of the Assessee on 31st October, 2002. Thereafter at the instance of the Assessee, it was redirected at the address of Noida. So, notice in question has been served upon the Assessee within the prescribed period.

8. As per material placed on record, the notice in question has been dispatched on 30th October, 2002 and thereafter it has been redirected to the Noida address of the Assessee. There is nothing on record to show as to on which date this notice was received at the given address of the Assessee and on which date the same was redirected.

9. As per order of the CIT(A) placed on record, the Assessing Officer was asked for comments and vide its letter dated 12/20th October, 2004, the Assessing Officer stated:-

“The notice was served by speed post which must be delivered to the Assessee within 24 hours, that is, by morning of 31st October”

10. So, the Assessing officer is also not sure nor specific as to when the notice in question has been served upon the Assessee. It is only a presumption that notice which have been sent by



speed post on 30th October, 2002, must have been delivered to the Assessee by 31st October, 2002. There is no presumption under the law that any notice sent by speed post must have been delivered to the Assessee within 24 hours. Moreover, there is nothing on record to show as whose instance the notice was redirected and sent at the address of Noida.

11. So, from the material available on record, we come to the conclusion that no notice under Section 143(2) of the Act, which is mandatory requirement of law, have been served upon the Assessee within prescribed period.

12. Under the circumstances, the appeal filed by the Assessee is allowed and the impugned order passed by the Tribunal is set aside.

13. The substantial question of law is, thus, answered in the affirmative, in favour of the Assessee and against the Revenue.

14. Appeal stands disposed of.

V. B. GUPTA, J.

March 24, 2008
Bisht

MADAN B. LOKUR, J.