



* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA No.349/2009

CIT-II
Through: Appellant
Mr.N.P. Sahni, Sr.
Adv. with Mr. P.C.
Yadav, Adv.

versus

JAGDAMBA MARBLES LTD.
Through:Respondent
Mr. Satyen Sethi with
Mr. Johnson Bara,
Advs.

% Date of Hearing : August 28, 2009

Date of Decision : September 04, 2009

CORAM:

* HON'BLE MR. JUSTICE VIKRAMAJIT SEN
HON'BLE MR. JUSTICE RAJIV SHAKDHER

1. Whether reporters of local papers may be allowed to see the Judgment?	Yes
2. To be referred to the Reporter or not?	Yes
3. Whether the Judgment should be reported in the Digest?	Yes

VIKRAMAJIT SEN, J.

1. This is an Appeal under Section 260 A(1) of the Income Tax Act, 1961 ('IT Act' for short) assailing the Order of the Income Tax Appellate Tribunal (ITAT), New Delhi passed on 4.7.2008 in respect of the Block Assessment period 1.4.1990 to 30.10.2000. Section 158BE(2b) prescribes that the period of limitation for block assessments shall be two years from the end of the month in which the notice under Chapter XIV-B of the IT Act came to be served on the assessee concerned. The ITAT has found that "admittedly" the notice under Section 158BD dated 24.1.2002 was dispatched to the



assessee on 28.1.2002 as per the postal receipt. The ITAT has further returned a finding of fact that this notice was served upon the assessee on 30.1.2002. The Block Assessment Order came to be passed on 5.2.2004 and ,therefore, lacked jurisdiction inasmuch as the last date on which it could have been passed was 31.1.2004. The Assessment Order records the address of the Respondent/Addressee as C-4/127, S.D. Area, New Delhi. However, according to learned counsel for the Respondent/Assessee the Assessee has shifted to 27, Sadhana Enclave, New Delhi around December-January, 2002. The ITAT has noticed that the aforementioned notice under Section 158BD dated 24.1.2002 was dispatched through Speed Post to the correct address, that is, 27, Sadhana Enclave, New Delhi. The envelope or any part of its enclosures enclosed alongwith Notice dated 24.1.2002 had not been returned to the Department raising the inference that it had been served on the Assessee. A copy of the Notice dated 15.2.2002, alongwith postal receipts and the returned envelope, have been placed on record. There is sufficient reason, therefore, for the assumption that the Notice was duly served on the Assessee. We have perused the Assessment Order dated 5.2.2004 passed by Shri Sanjay Gupta, Deputy Commissioner of Income Tax, Central Circle-18, New Delhi, noting that the Notice under Section 158BD read with Section 158BC was issued on 5.2.2002 and that the Block Return had been filed by the Assessee on



22.3.2002. Beyond this, there is no discussion on the aspect that the Assessment Order was passed within the time prescribed by law.

2. The CIT(A)-III, New Delhi, in the Order dated 14.1.2005, has recorded that "as per the A.O. the notice u/s 158BD dated 24.1.2002 was served upon the appellant on 15.2.2002. Though the appellant submitted that aforesaid notice was served on him on 30.1.2002, however, it could not bring on record any corroborative evidence to justify the same i.e. copy of speed post envelop or receipt showing date of service. Therefore, the ground raised by the appellant remained unsubstantiated and as the notice was served on 15.2.2002, the limitation for completion of block assessment proceedings comes to February, 2004".

3. It was in this factual background that learned counsel for the Respondent has placed on record the Notice dated 24.1.2002 with the envelope thereof, as well as Notice dated 15.2.2002 with its envelope, together with Memorandum of Appeal in Form-35 filed before the CIT(Appeals), which categorically makes a mention of the Notice dated 24.1.2002. On a scrutiny of the Notice dated 24.1.2002, as well as the envelope, we are unable to arrive at any conclusion other than that it was duly dispatched and received by the Assessee on or before 30.1.2002. This is despite the fact that the Response/Return was filed only on 22.3.2002. Mr. Sahni, learned Senior Counsel for the Department, had submitted that the



Notice dated 15.2.2002 was dispatched on 21.2.2002 but was returned to the Department with the endorsement that no such company existed at that address. According to him, the Notice dated 15.2.2002 was again issued on 4.3.2002. Meanwhile, the Return had been filed on 22.3.2002, which, in no way, excludes the possibility of service of the notice on the Assessee on or before 30.1.2002.

4. Our attention has been drawn to the decision of the Division Bench of this Court in *CIT -vs- Shanker Lal Ved Prakash*, [2008] 300 ITR 243, but we are unable to find any relevance. In that case, we had held that the burden lies on the assessee to prove that the service was not affected within time. In any event, the decision goes against the Department in view of the positive assertion by the Assessee that the Notice admittedly dispatched on 28.1.2002 had been received by the Assessee on 30.1.2002. Poignantly, it had been observed that “it would be fair for the Court to presume that a local letter would reach the assessee within three days....”. Similarly, *CIT -vs- Vins Overseas India Ltd.*, [2008] 305 ITR 320 definitively assists the case of the Respondent/Assessee inasmuch as it affirms that if a notice is properly addressed and dispatched through registered post, there is a presumption that it had been served on the assessee. The observation that there was no proper rebuttal of the presumption of valid service of notice militates against the case now set-out on behalf of the Department.



5. There is a disturbing feature of the case which we need to comment upon. Till the production of the Notice dated 24.1.2002 as well as the envelope in which it was contained, the Department had adhered to the position that no such notice had been issued. We had made a comparison of the signatures on the photocopy of the Notice dated 24.1.2002 with those obtaining in other documents and had come to the *prima facie* conclusion that contrary to what the Department would have us believe there was no plausible reason, whatsoever, for harbouring suspicion that the Notice dated 24.1.2002 had been manufactured by the Assessee. For this reason, we had summoned the Chief Commissioner of Income Tax as well as the Assessing Officer, both of whom have filed Affidavits. The Chief Commissioner stated in her Affidavit that no office copy of the Notice dated 24.1.2002 was available in the files of the Department. This Affiant has asseverated that the Notice dated 15.2.2002 had come back unserved and that, therefore, a Notice was again issued on 4.3.2002, in response to which the Assessee filed the Return of Income on 22.3.2002. The Assessing Officer, however, has now affirmed that he had issued the Notice dated 24.1.2002 which learned counsel for the Department has admitted was duly dispatched. The explanation in the Affidavit of the Assessing Officer dated 20.7.2009 states that the second Notice dated 15.2.2002 was thought by him to be necessary since he had not recorded his satisfaction prior to the



issuance of the Notice dated 24.1.2002. *Prima facie*, this explanation comes in the wake of the Department being put in the corner because of the filing by the Assessee/Respondent of the Notice dated 28.1.2002 and its envelope. It is distressing that the Department should be *privy* to such shifting stands.

6. We find no error, whatsoever, in the conclusion arrived at by the ITAT in the impugned Order, namely, that since the Order dated 5.2.2004 has been passed beyond the permissible statutory period which expired on 31.1.2004, it is, therefore, legally *non est*.

7. Appeal is without merit and is dismissed with costs of Rupees 5,000/- to be deposited within four weeks with the Prime Minister's Relief Fund.

(VIKRAMAJIT SEN)
JUDGE

September 04, 2009
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(RAJIV SHAKDHER)
JUDGE