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

\+ **ITA No. 570 of 2010**

% **Decided on:** May 26, 2010

The Commissioner of Income Tax
Central-III
Jhandewalan Extension
New Delhi. ..... Appellant
Through Mr.Sanjeev Sabharwal, Adv.

versus

Shri Ram Hari Ram
1658-59, Dariba Kalan
Delhi. ..... Respondent
Through None.

Coram:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE MADAN B. LOKUR

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

MADAN B. LOKUR, J. (ORAL)

The Appellant is aggrieved by an order dated 15th April, 2009 passed by the Income Tax Appellate Tribunal, Delhi Bench 'E' in ITA No. 4487/Del/1997 relevant for the Assessment Year 1993-94.

2. The Assessing Officer had noted that the Assessee had not filed the return of income by the due date, that is, 31st October, 1993. Accordingly, a notice under Section 148 of the Income Tax Act, 1961 was issued to the Assessee on 1st September, 1994 and served soon thereafter. On 27th October, 1994 the Assessee filed a return of income declaring its income as Rs. 11,370/-. An assessment was then framed by the Assessing Officer under Section 143(3)/148 of the Act and an order was passed on 3rd February, 1994 assessing the income of the Assessee at Rs.19,36,470/-.

3. Feeling aggrieved, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) but that appeal was dismissed by an order dated 16th July, 1997. A further appeal preferred by the Assessee before the Tribunal led to the order dated 15th April, 2009.

4. We have heard learned counsel for the Revenue and have gone through the order passed by the Tribunal and the material on record. It is quite clear that no substantial question of law arises in this appeal inasmuch as the issue before the Tribunal was decided entirely on the facts of the case.

2010:DHC:11017

The Tribunal has noted, as a matter of fact, that no reasons were recorded by the Assessing Officer before issuing a notice under Section 148 of the Act. The Tribunal had seen the original assessment folder and noted that there were no reasons available on the file or in the order sheets of the case. Since no reasons were recorded by the Assessing Officer (and this being a finding of fact) we are of the view that the Tribunal rightly quashed the assessment order.

5. The second reason given by the Tribunal for allowing the appeal of the Assessee was that no notice under Section 148 of the Act was served upon the Assessee. The assessment folder seen by the Tribunal contained a torn copy of the notice available on the file. This document did not indicate the section under which the notice was issued nor was it legible nor did it contain the date of issue. The torn notice was received by one Mr. S. Sharma on 7th September, 1994 but there was nothing to indicate that Mr. S. Sharma was authorized by anybody to receive the notice. In fact, the Assessee firm consisted of six partners all of whom have the name of Gupta and there is nobody by the name of Sharma in the firm. Since the notice in the assessment folder, even if it is assumed to be a valid notice under Section 148 of the Act was not served upon the Assessee, it cannot be held that there was any valid service.

6. The Tribunal placed reliance, and in our opinion quite rightl *Commissioner of Income Tax v. Rajesh Kumar Sharma, (2008) 214 CTR 547*, wherein it was held that if a notice is served on an employee of the Assessee who is not authorized to receive any such notice, then it cannot be said that there was valid service on the Assessee. This is what was said by this Court:

> "In so far as the first issue is concerned, there is no dispute that the notice was received by one Lalmani. According to the assessee Lalmani Shukla is an employee of the assessee but not Lalmani. Without going into this controversy, and even assuming that Lalmani is an employee of the assessee, the question is whether receipt of the notice by him is receipt of the notice by the assessee.
>
> Section 282(1) of the Act provides that a notice or requisition under the Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908. The provisions of Order V of the CPC, more particularly Rules 12 to 15 are relevant in so far as the present Appeal is concerned.
>
> Order V Rule 12 of the CPC provides that wherever it is practicable, service shall be made on the defendant in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient. Rules 13, 14 and 15 form a part of the same scheme. A joint reading of these Rules suggest that if a summon is accepted by a person who is authorised to do so, then only can it be said that the defendant (or the assessee in this case) has received the summons or that that service is good service.
>
> In so far as the present Appeal is concerned there is nothing to suggest that Lalmani was in any manner authorised to receive

any summons on behalf of the assessee. It was never the ca the Revenue that Lalmani was authorised to accept any notice on behalf of the assessee or was an agent of the assessee who was entitled to receive the notice under Section 147/148 of the Act. This being the position, it cannot be held that receipt of the notice by Lalmani amounted to service of the notice on the assessee."

7. In view of the above, in our opinion, since no reasons were recorded for issuing a notice under Section 148 of the Act and even the alleged notice was not served upon the Assessee, the order passed by the Tribunal is unexceptionable. No question of law arises for consideration much less a substantial question of law.

8. The appeal is dismissed.

MADAN B. LOKUR, J

CHIEF JUSTICE

MAY 26, 2010
kapil