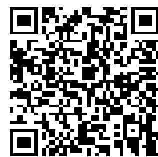

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Present : Mr N.P. Sahni & Mr Ruchesh Sinha, Advocates for the Appellant/ Revenue.
Mr Prakash Kumar, Advocate for the Respondent/ Assessee.

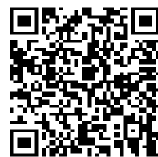
+ ITA No. 286/2007

* This appeal pertains to assessment year 1994-95. The only question of law which is proposed for our consideration is:

"Whether the ITAT was correct in law in holding that there was no valid service of notice under Section 143(2) of the Act on 25th March 1995?"

The learned counsels for the parties agree that the appeal can be admitted in relation to the aforementioned question and decided finally based on the material on record. It is ordered accordingly. The appeal is admitted. The aforementioned question is framed for adjudication.

In order to decide the aforesaid question of law the following brief facts require to be noticed: The assessee had filed a return for assessment year 1994-95 on 31.10.1994. In the said return the assessee had declared income in the sum of Rs 2,54,510/-. However, a notice under Section 143(2) of the Income Tax Act, 1961 (in short 'I.T. Act') was issued. The said notice, which was dated 13.03.1995, according to the revenue, was served on the assessee on 25.03.1995. To be noted that based on this notice an assessment order was passed under Section 143(3) of



the I.T. Act dated 14.03.1997 whereby, the total income of the assessee was assessed at Rs 42,60,873/-. Before the Assessing Officer, however, the assessee had taken an objection to the assessment being made based on the notice issued under Section 143(2) of the I.T. Act on the ground that it was beyond the period of limitation prescribed under the I.T. Act. The assessee contended that since the return had been filed on 31.10.1994, the notice ought to have been served on him on or before 31.10.1995. Based on this the assessee contended that the assessment proceeding had become time barred. The Assessing Officer, however, rejected this contention of the assessee and held that the assessee had been served on 25.03.1995. Consequently, the Assessing Officer proceeded to complete the assessment and passed an assessment order, as indicated above, on 14.03.1997.

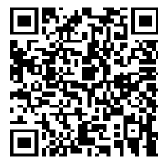
The assessee being aggrieved preferred an appeal before the Commissioner of Income Tax (Appeals) [in short 'CIT(A)']. The CIT(A) sustained the findings of the Assessing Officer on this issue.

The assessee, thus, being aggrieved preferred an appeal before the Income Tax Appellate Tribunal (in short 'ITAT'). The ITAT by the impugned judgment dated 24.03.2006 allowed the appeal of the assessee on this issue. Having allowed the appeal the ITAT held that it need not deal with the merits of the matter. The consequent effect of this was that the assessment order dated 14.03.1997 stood quashed.

After hearing learned counsel for the parties, what has come to our notice are the observations made by the ITAT in paragraph 12. A perusal of these observation would show that despite several opportunities having been given to the revenue, the original record pertaining to the proof of service of the impugned notice issued to the assessee under Section 143(2) of the I.T. Act could not be produced for one reason or the other. It may be pertinent to note at this stage that the assessee was originally assessed to tax at Chennai. By an order dated 01.08.2000 passed under Section 127 of the I.T. Act the jurisdiction was transferred to Delhi.

Mr Sahni, who appears for the revenue, submits that there was a finding of fact in favour of the revenue returned by the CIT(A) and the ITAT has reversed that finding of fact based on photocopy of documents produced by the assessee pertaining to the service of notice. It is the contention of Mr Sahni that the original record available with the revenue, which, though at the relevant time could not be produced, would demonstrate that the assessee had in fact been served on 25.03.1995.

On the other hand the learned counsel for the assessee contends to the contrary. He has referred to the photocopy of the acknowledgement slip (erroneously referred to as A/D card) filed by the assessee to show that neither the address of the addressee is given nor is it known as to who received the notice dated 13.03.1995.

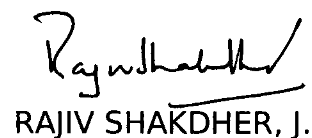


Be that as it may, we are of the view that the ITAT did not have an occasion to look at the original record which is now available with the revenue. In these circumstances, we are of the view that the ITAT ought to examine the original record, specially in the circumstances that the CIT(A) had returned a finding of fact in favour of the revenue after appraising the original record. It would be, in fact, in the interest of justice if the original record, now produced by the revenue, is examined by the ITAT to return a finding one way or the other on the aspect of service of the impugned notice.

Accordingly, we set aside the impugned judgment of the ITAT and remand the matter to the ITAT for re-examining the issue as to whether the notice under Section 143(2) of the I.T. Act dated 13.03.1995 was served on the assessee, as contended by the revenue on 25.03.1995. The ITAT shall give an opportunity to the assessee to inspect the original record and make submissions before it on the said issue. The question of law framed above, is thus answered in the negative and in favour of the revenue. The matter is remanded to the ITAT, as indicated above.

The appeal is disposed of.

SANJAY KISHAN KAUL, J.



SEPTEMBER 12, 2011
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RAJIV SHAKDHER, J.