



**COMMON ORDER - #25 & 26**

**% 04.05.2011**

Present: Ms.Rashmi Chopra, Sr. Standing Counsel for the appellant.  
Mr.Kanan Kapur, Advocate for the respondent.

**+ITAs No.2009/2010 & 2010/2010**

\*

The Tribunal has set aside the assessment on the ground that notice under Section 143(2) of the Income Tax Act was served belatedly and beyond the prescribed period of one year of limitation. For arriving at this finding, the Tribunal had perused the records and its observations are contained in paragraphs 6 and 7 of the impugned order passed by the Tribunal, which are as under:

"6. We have duly considered the rival contention and gone through the record carefully. On perusal of interim order sheet, we find a cutting in the first order sheet entry. It appears that the date from 31.10.2005 has been changed to 31<sup>st</sup> January, 2005. Similarly the next entry is 28.02.2006 it has been changed to 28.2.2005 both these cuttings are visible from the bare eyes. The few order sheet entries in the beginning are as under:

30.1.2005	Notice u/s 143(2) sent vide registered post for 28.2.2005.
28.2.2005	None attends
11.7.2006	Notice u/s 143(2) & 142(1) issued with questionnaire for 25.7.06.
28.7.2006	Attends Mr.Sunil Sharma file letter for adjournment. Adjourned to 6.9.06.
06.09.2006	Present Shri Subodh Gupta CA Part details are filed adjourned for rest on 14.9.06 for details.

7. We have perused the copy of notice issued u/s 143(2). In this notice there is a cutting in the date. It appears that in the first instance it was 31.10.2005, then the attempt has been made by changing the 0 of 10 in a dash. Similarly the assessee was required to attend the office on 25.12.2005. Here a little confusion is available whether it is 25.2.2005 or 25.12.2005. In our opinion this notice is of 31.10.2005 and not 31.01.2005. The



reason for this is that if it was 31<sup>st</sup> January, 2005 and is through he registered post then why the attempt was k made to effect the service through affixture. Service of this notice would be sufficient to take cognizance for scrutinizing the return of assessee. The other reason is there are cuttings in the dates of those notices. The third reason is there are cutting in the dates mentioned in the order sheet entry. The next reason is that AO himself has observed in the asstt. order and the date of notice is 31.10.2005. The cumulative settings of all these events indicate that this notice is 31.10.2005 and not 31<sup>st</sup> January, 2005. If there was a notice issued on 31<sup>st</sup> January, 2005 then there should be some proceedings available on the interim order sheet exhibiting the consequences of service and the next date of hearing. In the order sheet neither any proceeding is reflecting on 25.2.2005 nor indicating the service of notice through affixture. The proceeding after gap more than eight months all of a sudden has appears to be taken on 11.7.2006. There are copies of the notices issued subsequent to those dates i.e. 11.7.2006 and others. Reply to the assessee on all these dates are also available on the record. There is no confusion either in the dates or in any other details of subsequent notices. Even the postal receipts are also available on the back side of some of the notice."

For this reason, we had asked the learned counsel for the appellant, we asked the learned counsel for the appellant to produce the record. Even after going through the records, we find that the observation of the Tribunal are correct and on the scrutiny of the records produced before us. We, therefore, find no merit in this appeal, which is accordingly dismissed.

  
A.K. SIKRI, J.

  
M.L. MEHTA, J.

**MAY 04, 2011**  
Dev