*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 16th May, 2012
% *Date of Decision: 25th May, 2012*

\+ **ITA No.1142/2009**
\+ **ITA No.64/2010**

COMMISSIONER OF INCOME TAX .....Appellant
Through: Mr. Kamal Sawhney, Sr. Standing Counsel.

Versus

VISION INC. ....Respondent
Through: Mr. Salil Kapoor, Mr. Vikas Jain and Mr. Ankit Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

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

R.V. EASWAR, J.:

These are two appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act', for short) for the assessment year 2003-04. The reason why there are two appeals by the Revenue for the same assessment year is this. In the appeal filed against the assessment order, the assessee questioned the validity of the assessment order as also the additions made therein on merits. The CIT (Appeals) upheld the validity of the assessment order, but allowed substantial relief to the assessee on

merits. Against the order of the CIT (Appeals) the Revenue preferred an appeal on merits to the Income Tax Appellate Tribunal ('Tribunal', for short) in ITA No.3339/Del/2007. Against the decision of the CIT (Appeals) on the validity of the assessment order, the assessee preferred CO No.115/Del/2008 before the Tribunal. The Tribunal took up the cross objections filed by the assessee first since it went to the root of the matter and decided the validity of the assessment order in favour of the assessee, thus allowing the cross objections. In view of this decision, the Tribunal thought it unnecessary to adjudicate upon the appeal filed by the Revenue which was formally dismissed. A common order was passed by the Tribunal on 13.02.2009. The Revenue has preferred two appeals under Section 260A before us for this reason, namely, that the assessment has been held to be invalid as also because its appeal on merits has been dismissed by the Tribunal as a consequence. Though two appeals have been filed, the fundamental question arises in ITA No.1142/2009 which has been filed against the decision of the Tribunal in CO No.115/Del/2008.

2. On 16.05.2012, the following substantial question of law was framed by us.

> "*Whether the Income Tax Appellate Tribunal was right in quashing the assessment proceedings on the ground that the respondent-assessee was not served with any notice under Section 143(2) of the Income Tax Act, 1961, within the statutory period prescribed by the proviso to the said Section?*"

3. The brief facts giving rise to the aforesaid substantial question of law are these. The assessee is a partnership firm consisting of two partners

namely Manoj Gupta and his wife Shallu Gupta. It filed a return of income on 02.12.2003 for the assessment year 2003-04 for which the previous year ended on 31.03.2003. The income declared in the return was ₹7,83,554/-. The return was processed on 01.03.2004 under Section 143(1)(a) of the Act. Subsequently it was taken up for scrutiny and accordingly a notice under Section 143(2) was issued on 30.12.2004. Since the dispute centres around the service of this notice upon the assessee, we shall for the present keep aside the question whether it was served upon the assessee. Suffice to note that pursuant to notice issued on 12.09.2005 under Section 142(1) and several notices issued thereafter, the assessee actively participated in the assessment proceedings and partly furnished the details, documents and information called for by the Assessing Officer. The relevant dates of hearing and the remarks, datewise, as to what happened on those hearings have been re-produced in the assessment order. The Assessing Officer observed therefrom that the case was posted for hearing seventeen times and only on seven times details were furnished, that too partly and on the rest of the occasions nobody attended the hearing or filed any details.

4. The assessment proceedings ultimately resulted in an assessment order passed under Section 143(3) read with Section 144 of the Act on 31.03.2006. The total income assessed was ₹8,51,12,030/-. This consisted of the following items: -

"**Income from Business or Profession**	**Amount (₹)**
(a) Export Sale Proceeds as shown	₹6,07,27,576/-
(b) Duty Drawback received	₹68,97,158/-
(c) Unsecured loan of M/s. Lindt Exports	₹1,00,00,000/-

(u/s 68)	
(d) Sales outside the books	₹26,97,577/-
(e) Advances received from customers (u/s 68)	₹25,89,716/-
(f) Cash deposited in the bank (u/s 68)	₹22,00,000/-
Gross Total Income	₹8,51,12,027/-

5. The Assessing Officer did not allow the claim of ₹94,378/- made by the assessee under Section 80HHC of the Act which resulted in the total income being assessed at the above figure.

6. The assessee appealed against the assessment order before the CIT (Appeals) and contested both the validity of the assessment order and the additions made therein on merits. As regards the validity of the assessment order, the contention of the assessee was that no valid notice under Section 143(2) had been served upon it and therefore the assessment order was invalid. It would appear that the assessee had filed written arguments before the CIT (Appeals) in which this point had been also included. The written arguments were sent by the CIT (Appeals) to the Assessing Officer and a remand report was called for from him. In the remand report dated 11.01.2007 the Assessing Officer pointed out that the first notice issued under Section 143(2) of the Act on 27.12.2004 was sent to the assessee through the Inspector at the address given in the return of income, namely, E/18, Kalkaji, New Delhi. Under this notice the hearing was fixed on 31.12.2004. According to the Assessing Officer this notice could not be served because no such firm existed at the given address as per the

Inspector. Another notice dated 28.12.2004 was sent through speed post to the same address which also came back unserved with the postal comment that "no such firm existed in the given address". A third notice was thereafter sent on 30.12.2004 through the Income Tax Inspector at a different address namely K-16, Kalkaji, New Delhi, fixing the case for hearing on 05.01.2005. This notice, according to the remand report sent by the Assessing Officer, was served upon the person present at the address, since the partner Manoj Gupta was out of station. It is not clear whether his wife Shallu Gupta who was the other partner in the firm was also out of station as it appears to have been contended before the Tribunal on behalf of the assessee. The Tribunal, in para 4 of its order has referred to the remand report of the Assessing Officer as referring only to Manoj Gupta being out of station. The Tribunal has also recorded a finding that in the remand report there is no mention about the other partner Shallu Gupta. The inference of the Tribunal is that had the notice been served on Shallu Gupta, it was expected of the Assessing Officer to have said so in the remand report. We felt compelled to digress a little from the narration of the proceedings before the CIT (Appeals) because the contention of the assessee throughout, including the hearing before us, was that there was no evidence to show as to upon whom the notice was served. In fact one of the contentions raised before us on behalf of the assessee was that the notice was served on an unknown person.

7. Coming back to the remand report, it was stated by the Assessing Officer that since Manoj Gupta was out of station on 31.12.2004, the notice issued on 30.12.2004 was served upon the person present at the address on

31.12.2004 at 1:20 p.m. The CIT (Appeals) disposed of the aforesaid contention of the assessee in the following words: -

> "*(B) Now it is seen that the contention of the appellant is not correct. The assessment order makes it clear that notice under section 142(1) was issued on 12.9.05 after statutory notice under section 143(2) dated 30.12.04 accompanied with detailed questionnaire whereby the assessee was asked to furnish details/ information along with supporting documents and also to produce books of accounts i.e. ledger, cash book and bank book etc. In response to these notices Shri G. R. Keswani, FCA, Authorised representative of the assessee attended the proceedings from time to time with whom the case was discussed. He also filed part details which were placed on record. Thus the appellant's contention that the statutory notice u/s 143(2) was not served upon the appellant within the period of 12 months, does not hold good. If notice under section 143(2) was not served, no question about appearance and compliance by the AR of the appellant would have arisen. Secondly no such objection was raised at the time of assessment proceedings. The very fact that part compliance was made by the appellant proves that notice u/s 143(2) was served within the prescribed time-limit. So far as issuance of notice under section 142(1) is concerned as per provision of section 144, it is mandatory on the part of the AO that opportunity would be given by him to the assessee by serving a notice calling upon the assessee to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment. However, it further provides that "it shall not be necessary to give such opportunity in a case where a notice under sub-section (1) of section 142 has been issued prior to making of an assessment under this section". Since notice u/s 142(1) dated 12.9.05 had already been served upon the appellant, there was no further necessity of issuing a separate show cause notice providing opportunity to the assessee before assessment u/s 144 had to be completed. Thus so far as assessment completed u/s 144 is concerned, under the facts*

and circumstances of the case, it was correct and in accordance with the law and therefore its validity is hereby upheld."

8. The assessee preferred CO No.115/Del/2008 before the Tribunal in the appeal filed by the department in ITA No.3339/Del/2007 and questioned the finding of the CIT (Appeals) that there was no valid service of the notice issued on 30.12.2004 under Section 143(2) of the Act on 31.12.2004. It was submitted that the notice was not served on any of the two partners of the assessee-firm since both of them were out of station. The further contention of the assessee was that the name of the person upon whom the notice was allegedly served has not been disclosed by the Assessing Officer. It was argued before the Tribunal that even if it is assumed that an employee of the firm had received the notice, that cannot amount to proper service since no employee had been authorised to receive the notice and factually also, no notice had been handed over by any employee to any of the partners of the assessee-firm. It was thus contended that in the absence of a valid service of notice under Section 143(2) of the Act on the assessee within a period of 12 months from the end of the month in which the return of income had been filed, the assessment order was invalid, null and void.

9. The Tribunal agreed with the contentions of the assessee and concluded that the notice under Section 143(2) had not been served on any of the two partners of the assessee-firm and that it was not even the case of the Assessing Officer that it was so served. According to the Tribunal, what can at best be stated in favour of the Revenue was that the notice might have been served on some employee of the assessee firm though the

Assessing Officer had not stated upon whom the notice had been served. According to the Tribunal service of notice on the employee of the assessee did not amount to valid service as held by a Division Bench of this Court in ***CIT v. Rajesh Kumar Sharma***, (2009) 311 ITR 235. The Tribunal also held that it was not the case of the Revenue that the person upon whom the notice was allegedly served was authorised to receive the same. On these findings the Tribunal held that there was no valid service of the notice upon the assessee and hence the assessment order was invalid and was liable to be quashed. It was accordingly ordered.

10. The Tribunal also referred to the provisions of Section 292BB and held that those provisions were not applicable to the assessment year 2003-04 since they were inserted w. e. f. 01.04.2008 and were accordingly applicable only from the assessment year 2008-09. In this view of Section 292BB the Tribunal held that despite the fact that the assessee participated in the assessment proceedings, it could still object to the validity of the assessment order.

11. The only question that arises for our consideration is whether the notice issued on 30.12.2004 under Section 143(2) of the Act was validly served upon the assessee-firm on 31.12.2004 as claimed by the Assessing Officer. We proceed on the assumption that the notice was not served on either of the two partners of the assessee-firm and that it was served on some person who was not specifically authorised to receive notice. Even so, we are not persuaded to hold that there was no valid service of the notice upon the assessee-firm. It should be remembered that the basic purpose of issuing a notice under Section 143(2) of the Act is to give an

opportunity to the assessee, who has submitted his return, to support the same by adducing the necessary evidence, documents, etc. Clause (ii) of Section 143(2) in terms says that if the Assessing Officer considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not underpaid the tax in any manner, he may serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return. The proviso as it existed at the relevant time says that no notice shall be served on the assessee after the expiry of 12 months from the end of the month in which the return was submitted. There is in the present case undoubtedly no direct evidence of the service of the notice upon any of the partners. However, there can be no dispute and in fact it was not disputed by the assessee, that the notice had been served on a person who was not authorized to receive the same on behalf of the assessee-firm. In the remand report dated 11.01.2007, the Assessing Officer has stated that the notice issued on 30.12.2004 had fixed the hearing of the case on 05.01.2005. This fact has been noticed by the CIT (Appeals) in para 3.1 of his order. We would be closing our eyes to the realities if we hold that the participation of the assessee in the proceedings fixed on 05.01.2005 cannot be attributed to the service of the notice on 31.12.2004, albeit upon a person who is not authorized to receive the same. The learned counsel for the assessee protested before us that the participation or attendance in the proceedings before the Assessing Officer on 05.01.2005 was not pursuant to the notice issued on 30.12.2004. That in our opinion is an argument that is far-fetched to merit acceptance. It cannot be sheer coincidence that the

notice is served on 31.01.2004 upon some person available at the proper address and the person for whom the notice is meant participates in the proceedings on 05.01.2005 which is the date fixed by the said notice. It is difficult to visualise how else could the assessee have come to know that his case is posted before the Assessing Officer on 05.01.2005, except from the notice.

12. Several contentions were raised on behalf of the assessee before us which we may notice. It was argued, almost as an afterthought, that there is no evidence to show that the case was fixed for hearing on 05.01.2005 or that any one appeared on that date before the Assessing Officer on behalf of the assessee. We say that this argument is an afterthought because the initial argument was that the appearance made on behalf of the assessee on 05.01.2005 was not pursuant to the notice issued on 30.12.2004. Perhaps realising the difficulty that this argument is likely to cause to the assessee, the argument was modified later to the effect that there was no evidence to show that the case was fixed for hearing on 05.01.2005 or that any one appeared before the Assessing Officer on that date on behalf of assessee. The CIT (Appeals), as we have already held, has noted in para 3.1 of his order that in the remand report the Assessing Officer has stated that in the notice dated 30.12.2004, the case was fixed for hearing on 05.01.2005. This statement constitutes sufficient evidence to refute the contention advanced on behalf of the assessee. As regards the other part of the contention that there was no evidence of any one appearing before the Assessing Officer on behalf of the assessee on 05.01.2005, we may refer to the grounds taken by the revenue in the appeal before us, which were strongly relied on by Mr. Kamal Sawhney, learned senior standing counsel.

In ground (g) it has been asserted that pursuant to the notice issued on 30.12.2004 the counsel for the assessee appeared before the Assessing Officer on 05.01.2005 and filed his power of attorney. A true copy of the power of attorney has been filed along with the grounds of appeal. The grounds of appeal have been served upon the assessee-respondent and there was sufficient time for the assessee to have inspected the assessment record in case it wanted to dispute the assertion made in the ground of appeal. This was not done and therefore the assertion made in the ground of appeal remains uncontroverted. It follows that it will be fair and reasonable to infer that the appearance of the assessee's representative before the Assessing Officer on 05.01.2005 was only in pursuance of the notice issued on 30.12.2004 under Section 143(2) of the Act.

13. The other argument advanced on behalf of the assessee was that since the partners of the assessee firm were out of town on 31.12.2004, it was incumbent upon the Assessing officer to serve the notice by affixture instead of serving the same on the person available at the address. It is well settled that service by affixture can only be resorted to when the person sought to be served cannot be found with due and reasonable diligence (see Order 5 Rule 17 CPC). But when it was known to the Assessing Officer that the partners were out of town it cannot be said that they could not be found by the exercise of due diligence. The only option then available to the Assessing Officer was to hand over the notice to the person available at the address. All this, even if it was irregular, pales into insignificance once it is found that the notice intimated the date of hearing as 05.01.2005 and on that date the representative of the assessee appeared before the Assessing Officer and filed his power of attorney. This conduct

clearly shows that the assessee was aware of the receipt of the notice and the posting of his case for hearing on 05.01.2005. As already pointed out, the issue of a notice under Section 143(2) of the Act is to enable the assessee to adduce evidence in support of the return submitted by him. The provision is essentially conceived in the interests of the assessee and once he comes to know of the opportunity that has been accorded to him and also takes a step towards availing of the same, it does not lie in his mouth to turn round and contend that there was no valid service of the notice upon him.

14. Several authorities were cited on behalf of the assessee, including those of this Court to the effect that if there is no valid service of the notice under Section 143(2) of the Act, the assessment order is null and void. The question before us however is whether there was a valid service of the notice upon the assessee. We have held, considering the facts of the case and the conduct of the assessee, that there has been a valid service of the notice upon the assessee. He has also participated in the proceedings. In the decided cases to which our attention was drawn, the discussion has proceeded on the basis that there was no service of the notice upon the assessee and therefore the assessment order was null and void. Where the facts show that there has been effective service of the notice upon the assessee pursuant to which he has also participated in the proceedings for assessment of his income, there is nothing in law to compel the Court to hold that despite notice that his case is posted for hearing before the Assessing Officer, the assessment order passed after giving him full opportunity of being heard would still be invalid. That will be a travesty of justice.

15. We may briefly refer to some of the authorities cited on behalf of the assessee. In ***Assistant Commissioner of Income-tax v. Hotel Blue Moon***, (2010) 321 ITR 362, the Supreme Court was concerned with the question whether in the case of block assessment proceedings under Chapter XIV-B of the Act, the issue of notice under Section 143(2) of the Act within the prescribed period is mandatory. It was held that the notice is the very foundation for the jurisdiction to assess the undisclosed income found in the course of the search and seizure and therefore the issue of such a notice and the service thereon on the person who is found to have earned the undisclosed income is mandatory. In this decision the Supreme court also affirmed the decision of this Court in ***CIT v. Pawan Gupta***, (2009) 318 ITR 322. These judgments are not relevant for the controversy arising in the present case.

16. The judgment of this Court in ***CIT v. Rajesh Kumar Sharma*** (supra) does not cover the present controversy at all. This decision has been erroneously relied upon by the Tribunal. In this decision, the assessee questioned the validity of the service of the notice issued under Section 148 of the Act on the ground that it was served on a person who was not authorised to receive such a notice. This Court accepted the assessee's contention and held that there was no proper service of the notice under Section 148 of the Act and therefore the entire reassessment proceedings were without jurisdiction and invalid. A perusal of the judgment shows several distinguishing features. Firstly, it was dealing with a notice issued under Section 148 of the Act to reopen the assessment proceedings which is a jurisdictional notice affecting the very validity of the re-assessment proceedings. Long back in ***Y. Narayana Chetty and Anv. v. ITO, Nellore***

and Others, (1959) 35 ITR 388, it was held by Gajendragadkar, J., speaking for the Supreme Court as follows: -

> "*The argument is that the service of the requisite notice on the assessee is a condition precedent to the validity of any re-assessment made under section 34; and if a valid notice is not issued as required, proceedings taken by the Income-tax Officer in pursuance of an invalid notice and consequent orders of re-assessment passed by him would be void and inoperative. In our opinion, this contention is well-founded. The notice prescribed by section 34 cannot be regarded as a mere procedural requirement; it is only if the said notice is served on the assessee as required that the Income-tax Officer would be justified in taking proceedings against him. If no notice is issued or if the notice issued is shown to be invalid then the validity of the proceedings taken by the Income-tax Officer without a notice or in pursuance of an invalid notice would be illegal and void. That is the view taken by the Bombay and Calcutta High Courts in Commissioner of Income-tax v. Ramsukh Motilal, (1955) 27 ITR 54 and R. K. Das & Co. v. Commissioner of Income-tax, (1956) 30 ITR 439 and we think that that view is right.*"

It was therefore held by this Court and rightly, if we may say so with respect, that since there was no proper service of the notice issued under Section 148 of the Act, the entire reassessment proceedings were invalid. Secondly, the notice was sent by speed post to an improper address, an address which was not the address of the assessee. Thirdly even before the Assessing Officer the assessee took up the plea, soon after receiving the notices under Section 142(1) and 143(2) of the Act, that he was unaware of any notice having been issued under Section 148 of the Act. He entered appearance and filed his return under protest making it abundantly clear that he had not received the notice reopening his assessment. The conduct

of the assessee in the case before us is different. We have already seen that its authorised representative appeared before the Assessing Officer on 05.01.2005, which was the date specified in the notice dated 30.12.2004 as the date of hearing and filed his power of attorney. There is no case set up by the assessee that such appearance by its authorised representative was either under protest and without prejudice or that the authorised representative or the assessee at any point of time during the assessment proceedings had raised the plea that no notice under Section 143(2) of the Act had been served upon the assessee. In fact, the objection that there was no valid service of the notice under Section 143(2) of the Act was raised for the first time before the CIT (Appeals). It was not raised before the Assessing Officer at all. The decision of this Court in CIT v. Vishnu & Co. P. Ltd. (supra) also falls in the category of CIT v. Pawan Gupta (supra). In CIT v. Lunar Diamonds Ltd. (supra) the question before this Court was whether there was any valid service of the notice issued under Section 143(2) of the Act. There the notice was sent by registered post but an affidavit was filed on behalf of the assessee that it did not receive the notice. It was also contended that the receipt issued by the post office did not show the address of the assessee but only the name. These facts were considered sufficient by this Court to refute the service of the notice and the assessment order was accordingly quashed. As can be seen, the facts in the case before us are much stronger for the Revenue. The decision is therefore distinguishable.

17. In our opinion the Tribunal fell into an error in accepting the contention of the assessee without examining the crucial and relevant fact such as the appearance of the assessee's authorised representative before

the Assessing Officer on 05.01.2005 which is the date fixed for hearing in the notice issued on 30.12.2004. The Tribunal further erred in holding that the participation of the assessee in the assessment proceedings is of no consequence because the provisions of Section 292BB came into force only from 01.04.2008. The participation of the assessee in the proceedings for the assessment in the present case is an important fact to be taken note of, not because of Section 292BB but in the light of the fact that the notice dated 30.12.2004 mentioned 05.01.2005 as the date of hearing, on which date the authorised representative had appeared and filed his power of attorney before the Assessing Officer. A little probing was enough to show that the apparent was not the real. It would be against the spirit of law relating to income tax assessments if one were to too readily be willing to hold that there was non-service or invalid service of the notice under section 143(2) of the Act, merely on peripheral allegations or facts and not looking at the substance i.e. whether the notice in fact was served and even acted upon by way of appearance entered before the Assessing Officer. This has made the impugned order erroneous and perverse as relevant and material aspects have been ignored and not given credence. A provision intended for the benefit of the assessee and conceived in accordance with the rules of natural justice should not be permitted to be abused by the very person for whose benefit it is intended and should not be permitted to become a tool to ward off the liability to pay the tax. We are not to be understood as saying that in no case can the service of notice under Section 143(2) of the Act can be held to be invalid. In making the aforesaid observations, what we intend is merely to caution the departmental authorities and the appellate authorities to keep in mind the following

observations made by the Federal Court in Chatturam v. CIT, (1947) 15 ITR 302: -

> "*The income-tax assessment proceedings commence with the issue of a notice. The issue or receipt of a notice is not, however, the foundation of the jurisdiction of the Income-tax Officer to make the assessment or of the liability of the assessees to pay the tax. It may be urged that the issue and service of a notice under section 22(1) or (2) may affect the liability under the penal clauses which provide for failure to act as required by the notice. The jurisdiction to assess and the liability to pay the tax, however, are not conditional on the validity of the notice. Suppose a person, even before a notice is published in the papers under section 22(1), or before he receives a notice under section 22(2) of the Income-tax Act, gets a form of return from the Income-tax Officer and submits his return, it will be futile to contend that the Income-tax Officer is not entitled to assess the party or that the party is not liable to pay any tax because a notice had not been issued to him. The liability to pay the tax is founded on sections 3 and 4 of the Income-tax Act, which are the charging sections. Section 22, etc., are the machinery sections to determine the amount of tax.*"
>
> (underlining ours)

18. The above observations were approvingly cited by the Supreme Court in CIT v. Jai Prakash Singh, (1996) 219 ITR 737. In addition, the Supreme Court also noticed its observations made earlier in Estate of Late Rangalal Jajodia v. CIT, (1971) 79 ITR 505 which are as under: -

> "*The lack of a notice does not amount to the revenue authority having had no jurisdiction to assess, but that the assessment was defective by reason of notice not having been given to her. An assessment proceeding does not cease to be a proceeding under the Act merely by reason of want of notice. It will be a proceeding liable to be challenged and corrected.*"

Noticing the aforesaid two judgments, the Supreme Court in Jai Prakash Singh's case (supra) held as under: -

> "*The principle that emerges from the above decision is that an omission to serve or any defect in the service of notices provided by procedural provisions does not efface or erase the liability to pay tax where such liability is created by distinct substantive provisions [charging sections]. Any such omission of defect may render the order made irregular- depending upon the nature of the provision not complied with- but certainly not void or illegal.*"

19. The observations made in the judgments of the Federal Court (supra) and the Supreme Court in the two judgments cited above are to be understood as reminders that whenever a case is set up by the assessee that there has been no valid or proper service of the notice issued under Section 143(2) of the Act, be it for the purpose of regular assessment under Section 143(3) of the Act or for the purpose of a block assessment under Chapter XIV-B or for the purpose of an assessment under Section 153A, such a plea has to be examined thoroughly and in-depth by taking a practical and reasonable view of the matter, not inconsistent with the statutory provisions, keeping in mind the basic principle that the liability to pay tax, which is founded on the charging provisions of the statute, is not to be nullified on specious or unjustified pleas taken by the assessee.

20. In view of the foregoing discussion we hold that the Tribunal was not right in quashing the assessment proceedings. We hold that the assessee was properly served with the notice under Section 143(2) of the Act and within the statutory period prescribed by the proviso to the said

sub-section. Accordingly, the substantial question of law is answered in the negative, in favour of the Revenue and against the assessee. Since, the Tribunal has not examined the order of the CIT (Appeals) giving relief to the assessee in respect of various additions made in the assessment because of the view it took on the question of validity of the assessment, we remit the issue to the Tribunal for a fresh disposal of the appeal filed by the Revenue before it in ITA No.3339/Del/2007 in accordance with law.

21. The appeals of the Revenue are disposed of accordingly. In the circumstances there shall be no order as to costs.

R.V.EASWAR, J

SANJIV KHANNA, J

MAY 25, 2012
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