

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

ITA No.347 /2006

% Judgment reserved on: 18th March, 2008
Judgment delivered on: 25th March, 2008

Commissioner of Income Tax
Delhi-ii, New Delhi ... Appellant
Through: Ms. P.L.Bansal, Adv.

Vs.

M/s. Madhvi Films Pvt. Ltd.
A-44, Sector-6,
Noida Respondent
Through: Mr. Rajnish Goyal, Adv.

Coram:

HON'BLE MR. JUSTICE V.B. GUPTA
HON'BLE MR. JUSTICE MADAN B. LOKUR

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| 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 |

V.B.GUPTA,J.

The following substantial question of law arises in the

present appeal:-

“Whether the Income Tax Appellate Tribunal was correct in law in quashing the assessment framed by the Assessing Officer on the ground that notice under Section 143(2) of the Income Tax Act, 1961 was not served upon the Assessee within the prescribed period?”

The facts in brief are that Assessee filed his return on 31st October, 2001 declaring loss of Rs.8,37,355/-. Notice under Section 143(2) of the Act was issued by the Assessing Officer on 23rd October, 2002 and thereafter on 18th December, 2002 fixing the case for hearing on 29th October, 2002 and 24th December, 2002. None attended in response to these notices. Accordingly, Assessing Officer again issued notice under Section 142(1) of the Act on 29th January, 2003 fixing the case on 7th February, 2003. This notice was also not complied with. Accordingly, the Assessing Officer framed assessment under Section 144 of the Act and disallowed the claim of the Assessee with

respect to advertisement and public expenses of Rs.8,87,917/-, as the Assessee did not furnish any evidence in support of his claim despite of it being specifically asked.

Aggrieved with the assessment order passed by the Assessing Officer, the Assessee filed an appeal before the Commissioner of Income Tax (Appeals) (in short as 'CIT [A]') also challenging the assessment order on the ground that notice under Section 143(2) of the Act was not served on the Assessee within the prescribed period. The CIT(A) held that notice was issued by the Assessing Officer on 23rd October, 2002 i.e. within the prescribed period and the assessment order framed by the Assessing Officer was upheld.

Being dissatisfied with the order passed by the CIT(A), the Assessee filed an appeal before the Income Tax Appellate Tribunal (for short as 'Tribunal') and the Tribunal vide the impugned order dated 31st May, 2005 passed in ITA No.918(Del)/2005 for the assessment year 2001-02

quashed the assessment as well as the demand raised in pursuance thereto, on the ground that notice under Section 143(2) of the Act was not served upon the Assessee within a period of limitation as prescribed under Section 143(2) of the Act.

Now, the Revenue has filed the present appeal challenging the impugned order passed by the Tribunal.

It has been contended by learned counsel for the Revenue that notice in question was issued on 23rd October, 2002 and the same was dispatched on 25th October, 2002 and since the same has not been received back undelivered, there is a presumption under the law that notice has reached the Assessee.

Learned counsel for the Respondent has relied upon the order passed by the Tribunal and has contended that no notice has been served within the prescribed period.

Service of notice under Section 143(2) of the Act must be affected in the manner laid down in Section 282 of the

Act.

Section 282(1) of the Act which is relevant for deciding the present controversy, reads as under:-

“S.282 Service of notice generally-(1)

A notice or requisition under this 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 (5 of 1908).”

In the present case, the notice has been issued on 23rd October, 2002 and was sent through speed post from I.P. Estate Post Office on 25th October, 2002 at the address of the company as per return which has been mentioned by the Assessing Officer in his remand report.

Section 27 of the General Clauses Act, 1897 provides that service by post is deemed to have been effected by properly addressing, pre-paying and posting by registered post, a letter containing the notice required to be served. Unless the contrary is proved the service is deemed to have

been effected at the time when the letter would be delivered in the ordinary course of post.

Though this presumption is rebuttable but in the absence of proof to contrary, the presumption of proper service or effective service of the notice would arise. There is nothing on record to show that the notice dated 23rd October, 2002 dispatched on 25th October, 2002 by speed post was undelivered or received back. Under the normal circumstances, a presumption will lie that this notice has reached the Assessee within 2/3 days. Since the envelope containing the notice in question has not been received back by the Income Tax Department, there is a presumption that it has reached the Assessee and, this presumption has not been rebutted by the Assessee at all. No affidavit has been filed by the Assessee to the effect that the notice was not received by it.

Under these circumstances, we hold that notice under Section 143(2) of the Act was served upon the Assessee

within the prescribed period and as such this finding given by the Tribunal that no notice under Section 143(2) have been served upon the Assessee within the prescribed period is hereby set aside and the substantial question of law is decided in the negative in favour of the Revenue and against the Assessee.

Accordingly, the present appeal stands allowed.

V.B. GUPTA, J

MARCH 25, 2008
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MADAN B. LOKUR, J