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

Decided on: 11th February, 2015

+ ITA 18/2014

MOHAN S LAKHANI Appellant

Through Mr. K V S Gupta, Adv.

versus

INCOME TAX OFFICER & ANR. Respondents

Through Mr. Arjun Harkauli, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The question of law aggrieved by the assessee is whether Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") fell into error in holding that in the circumstances of the case the notice under Section 143(2) was served within the period of limitation so as to validate the assessment proceedings of assessment year (AY) 2006-07.

2. The brief facts of the case are that the assessee concededly filed its return for AY 2006-07. It did not receive any notice during the statutory limitation period prescribed by law as it prevailed then. The Assessing Officer (AO) nevertheless proceeded to frame and finalize the assessment year seeking to bring to tax amounts, on 12.12.2008. The assessee carried that order in appeal to the CIT(Appeals), which confirmed the additions. The CIT(Appeals) rejected the assessee's contentions with regard to its not

having received notice within the limitation period. The Commissioner was guided by the revenue's assertions that notice had been issued to the assessee through its chartered accountant. It is not in dispute that after 31.7.2007, notice was received by the assessee as a result of which it participated – though under protest – in the assessment proceedings. The ITAT noticed the assessee's contentions with respect to its having participated in the assessment proceedings – though under protest, in the following terms :

“Aggrieved by the Order of the A.O., the assessee took up the matter in appeal and submitted that the notice u/s 143(2) could have been served on the assessee latest by 31.07.2007 i.e. within 12 months of the end of the month in which return was furnished. The first notice was served in the month of October, 2007, and objection to that was filed vide letter dated 05.11.2007. The first notice u/s 143(2) received in Oct. 2007. The said objection was again reiterated vide letter dated 12.05.2008. However, the assessee has participated in the assessment proceedings stated to be under protest and it was pleaded that the assessment made by the AO. is null and void as no notice u/s 143(2) was served within the statutory time.”

Nevertheless it rejected the appeal holding as follows :

“Heard both the sides, considered the material on record as well as the case law cited by rival sides. It is not in dispute that notice u/s 143(2) dated 28.06.2007 was sent through Shri KBS Gupta, CA, the Ld. A.R. of the assessee, who attended the assessment proceedings from time to time and filed the details called for. The said notice was issued within one year from the date of filing of return of income. All the pleas raised before the tribunal were duly raised before Ld. CIT(A) also who has dealt with the issue in detail after considering the facts and circumstances and case law cited by the assessee, (and noted by the first appellate authority) has passed the impugned

order. Since no fresh material or evidence has been produced and the order of Ld. CIT(A) is based on the decision of Hon'ble Jurisdictional Court against which no direct decision of any High Court has been cited, therefore, no reasonable basis have been found to interfere in the order passed by Ld. CIT(A). As such, while upholding the order of Ld. CIT(A), appeal of the assessee is dismissed.”

3. It was argued that when the consistent position of the assessee was that it never received notice, nor was it proved to the satisfaction of the Tribunal that such service could be deemed to have been served in a manner known to law, the findings rendered by the ITAT are in error of law. The learned counsel stressed upon the fact that participation in the assessment proceedings was under-protest and could not have been taken as adverse fact against the claim for not receiving notice.

4. This Court had directed the revenue to produce the original record of the assessment. Carbon copies of notice are on record and such notices were alleged to have been sent to the assessee before 31.7.2007, yet there is no material to show that they were dispatched. Another important aspect is that the notice was not sent through registered post nor affixed at the assessee's address known to the revenue so as to allow presumption enacted under Section 7 of the General Clauses Act to operate. In these circumstances the notice issued after the period of limitation could not be held against the assessee as done by the CIT(Appeals) which rejected the appeal. Consequently, following the previous rulings of this Court, [i.e. *Shyam Gopal Charitable Trust V. Director of Income Tax* (2006) 290 ITR 99 (Del.); *BHPE KINHILL Joint Venture V. Addl. DIT* (2008) 304 ITR and (AT) 285 Delhi; *World wide Exports P. Ltd. Vs ITO* (2005) 272 ITR 162

(AT) (Del.)], it is held that the revenue did not discharge the burden of proving due service of notice which was caused by law upon it. Consequently, the findings of the ITAT and as well as CIT(Appeals) cannot be sustained. The question of law is answered against the revenue and in favour of the appellant.

5. The appeal is accordingly allowed in the above terms.

FEBRUARY 11, 2015
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S. RAVINDRA BHAT
(JUDGE)

R.K.GAUBA
(JUDGE)