

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Income Tax Appeal No. 250 of 2015 (O&M)
Date of Decision: 12.08.2016

Smt. Prem Vasisht

..Appellant

versus

Commissioner of Income Tax, Chandigarh.

..Respondent

CORAM: HON'BLE MR. JUSTICE S.J.VAZIFDAR, CHIEF JUSTICE.
HON'BLE MR. JUSTICE DEEPAK SIBAL.

Present : Mr. S.K.Mukhi, Advocate, for the appellant.
Ms. Urvashi Dugga, Advocate, for the respondent.

S.J.VAZIFDAR, CHIEF JUSTICE

This is an appeal against the order of the Income Tax Appellate Tribunal dismissing the appellant-assessee's appeal against the order of the Commissioner of Income Tax (Appeals) which in turn dismissed the appellant's appeal against the assessment order pertaining to the assessment year 1998-99.

2. According to the appellant, the following substantial questions of law arise in this appeal:-

- “A) Whether the ITAT was justified in confirming the order of first appellate authority regarding service of notice under section 143(2) by completely ignoring the assessment record, facts and circumstances of the case and the well settled law as so held by Hon'ble Supreme Court of India in the case of *Assistant Commissioner of Income Tax and another v. M/s Hotel Blue Moon* 321 ITR 362 (SC), 35 DTR-1 (SC), wherein it was held that service of notice is essential and “omission on the part of the Assessing Authority to issue notice under section 143(2) cannot be a procedural irregularity and the same is not curable and,

therefore, the requirement of notice under section 143(2) cannot be dispensed with?

- B) Whether the ITAT was justified in not adjudicating the issues on merits which have not been set aside in its original order wherein only the legal issue of service of notice under section 143(2) of the Income Tax Act, 1961 was set aside to the file of CIT(A) so that so the orders of ITAT is erroneous and perverse?”

3. As far as question-A is concerned, it is entirely a question of fact. The issue is whether the appellant-assessee had received a notice dated 30.09.1999 under section 143(2) of the Income Tax Act, 1961 (for short ‘the Act’).

4. The appellant filed a return declaring a total income of ₹ 1,33,710/- plus an income of ₹ 12,00,000/-. The last date for serving a notice under section 143(2) of the Act was 31.12.1999. The respondent contends that a notice dated 30.09.1999 under section 143(2) of the Act was served upon the assessee. The assessee denied the receipt of this notice. The main question is whether this notice had been served upon the assessee.

The respondent served another notice under section 143(2) dated 09.02.2001. The receipt of this notice is not denied. However, this notice is beyond the period prescribed for serving a notice under section 143(2) of the Act.

5. The assessment order was passed on 30.03.2001. The assessee filed an appeal before the Commissioner of Income Tax (Appeals) which was disposed of by an order dated 17.03.2003. The assessee filed an appeal before the Income Tax Appellate Tribunal which by an order dated 21.07.2006 restored the issue regarding the service of notice to the file of the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) examined the matter again but by an order dated 04.11.2013

rejected the assessee's contention in respect of the notice dated 30.09.1999. This order was upheld by the impugned order of the Income Tax Appellate Tribunal dated 10.10.2014.

6. Initially a questionnaire was also served upon the assessee on 09.02.2001. The assessee's Advocate by a letter dated 15.02.2001 merely referred to the assessment proceedings and to the questionnaire alongwith the notice under section 143(2) of the Act and dealt with the queries therein. The respondent relies upon the fact that in this letter the assessee's Advocate did not raise the contention that the letter dated 25.01.2001 was beyond the period prescribed for issuing a notice under section 143(2) of the Act. We will assume here that whether the contention was taken or not, if it was beyond the prescribed period the assessee would be entitled to challenge the same successfully. We are concerned here with the respondent's case that the assessee's Advocate not having raised this issue, it is reasonable to infer that the notice dated 30.09.1999 was served upon the assessee. The submission is that if the notice dated 30.09.1999 had not been served upon the assessee and if the notice dated 25.01.2001 was the first notice under section 143(2), the assessee's Advocate, would have contended that it was beyond the stipulated period. This is certainly a possible view. This we will presume is only a possibility, though not the only possible view or inference. That being so, the impugned orders cannot be interfered with for it would be a reasonable inference by the authorities arrived at on a balance of probabilities on the issue as to whether the notice dated 30.09.1999 was served or not.

7. On the other hand on behalf of the assessee reliance was placed upon a letter dated 16.02.2001 addressed by the assessee's husband in which it was specifically contended that the notice dated 25.01.2001 was beyond

the period stipulated. Indeed the notice dated 25.01.2001 is beyond the period stipulated. The question, however, is whether the notice dated 30.09.1999 was served upon the assessee or not.

8. Mr. Mukhi, learned counsel appearing on behalf of the assessee contended that the letter dated 16.02.2001 indicates that the assessee had not received the notice dated 30.09.1999. Had that been all the assessee's case the same may well have been stronger. However, in the present case, there are factors that indicate that the notice dated 30.09.1999 was served. We have already dealt with the effect of the letter dated 15.02.2001. In addition thereto the respondent denied having received the letter dated 15.02.2001 stating that it is not in their record. This, therefore, involves a decision on a balance of probabilities.

9. Mr. Mukhi, further submitted that the alleged notice dated 30.09.1999 fixed 06.10.1999 as the date of hearing. He submitted that there is nothing on record to indicate that any hearing or proceedings took place on 06.10.1999. Even if there is nothing on record to indicate the same it would be another factor to be taken into consideration.

11. In these circumstances we are unable to hold that the view taken by the authorities on a balance of probabilities is perverse or absurd.

12. The appeal in so far as it concerns question-A, is, therefore, dismissed as it raises no substantial question of law.

13. Mr. Mukhi submitted that in any event the matter ought to be heard on-merits.

14. We agree. If this preliminary contention as regards the notice is rejected, the assessee's appeal ought to have been heard on-merits. The observation of the Tribunal in paragraph-8 of the impugned order that no

other ground or issue was argued or pressed appears to be restricted to grounds and issues pertaining to the said notice dated 30.09.1999 alone.

15. In the circumstances, question-B is answered in favour of the assessee. The Tribunal shall hear the appeal on-merits except as regards the issue regarding the service of notice dated 30.09.1999 which is answered in favour of the respondent.

(S.J.VAZIFDAR)
CHIEF JUSTICE

(DEEPAK SIBAL)
JUDGE

12.08.2016
'ravinder'

Whether speaking/reasoned	√Yes/No
Whether reportable	Yes/No√