IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 671 OF 2015

The Principal Commissioner of Income Tax-15
Mumbai .. Appellant

v/s.
Nilesh Badani .. Respondent

Mr. Arvind Pinto for the appellant
Mr. Rohan Deshpande i/b Mr. Mihir Naniwadekar for the respondent

CORAM : S.V. GANGAPURWALA &
A.M. BADAR, J.J.

DATED : 1st AUGUST, 2017

P.C.

1. The appeal pertains to Assessment Year 2008-09.

2. Mr. Pinto, learned Counsel submits that the Tribunal was not justified in holding that the substitute service by affixing was invalid. The ingredient as laid down under Order V, Rule 17 of the CPC were followed. The strict procedure as laid down under the CPC is not required to be followed in the service of Income Tax notices. The assessee had left his last known address without informing the Assessing Officer. The notice issued by the registered post was

returned back and as such the inspector served the notice by affixing it on conspicuous place of the residence of the assessee. The Tribunal has taken a technical approach.

3. Mr. Deshpande, the learned Counsel for the respondent supports the order and submits that the inspector had not followed the procedure. There is no evidence to indicate in the report of the inspector that he had personal knowledge of the place of the business of the assessee and was in a position to identify the same. The learned Counsel relies on the judgment of the Apex Court in a case of ***Commissioner of Income Tax Vs. Ramendra Nath Ghosh, reported in (1971) 82 ITR 888***.

4. We have considered the submissions. The personal service on the assessee was not effected as such substitute mode of service was sought to be adopted. The provisions of Order V, Rule 17 of the CPC in such case are required to be adhered to. It has been observed by the Tribunal that the Inspector has not recorded that he had personal knowledge of the place of the business of the assessee or that he was in a position to identify the same. No affidavit is also filed of the

serving officer. The serving officer has not certified that the service is effected. The report does not mention the name of the person who identified the place of the assessee.

5. The judgment of the Apex Court in the case of *Ramendra Nath Ghosh* (supra) would certainly apply to the facts of the present case. The Tribunal has considered the said aspect of the matter in a plausible manner.

6. In the light of that no substantial question of law arises. The appeal is dismissed. No costs.

(A.M. BADAR, J.) **(S.V. GANGAPURWALA, J.)**