IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2024

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH
and
THE HONOURABLE MR.JUSTICE G. ARUL MURUGAN

T.C.A.Nos. 1035 of 2010 & 94 of 2011

M/s.R.Marisamy & Sons
7, Jhansi Nagar, Iind Cross,
Mudaliyarpet,
Pondicherry
(PAN-AAGFR 2122J) .. Appellant in both appeals

vs

The Income Tax Officer,
Ward-III(2), Coimbatore. .. Respondent in both appeals

Prayer in TCA No.1035 of 2010: Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, C Bench, Chennai dated 24.06.2010 in M.P.No.54/Mds/10 (arising out of ITA No.641/Mds/08).

Prayer in TCA No.94 of 2011: Appeal filed under Section 260A of the Income-Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, C Bench, Chennai dated 08.09.2008 in ITA No.641/Mds/08.

For Appellant	:	Mr.P.Rajavelu (in both appeals)
For Respondent	:	Mr.S.Rajesh, Junior Standing Counsel for Mr.J.Narayanaswamy Senior Standing Counsel (in both appeals)

COMMON JUDGMENT
(Delivered by Dr. ANITA SUMANTH.,J)

We have heard Mr.P.Rajavelu, for the appellant and Mr.S.Rajesh, learned Junior Standing Counsel for Mr.J.Narayanaswamy, learned Senior Standing Counsel for the respondent.

2. The challenge is to an order of the Income-Tax Appellate Tribunal dated 08.09.2008 and the substantial questions of law that have been admitted on 22.03.2011 are as follows:-

> *"1. Whether in the facts and in the circumstances of the case the service of notice under Section 143(2) of the Income Tax Act, 1961 within the prescribed time limit for the purpose of making the assessment under Section 144 of the Income Tax Act, 1961 is mandatory?*
> *2. Whether in the facts and in the circumstances of the case and in law the Tribunal was justified in non-consideration of the specific ground with regard to questioning the validity of service of notice under Section 143(2) of the Income Tax Act?*
> *3. Whether the facts and in the circumstances of the case and in law, the Tribunal was justified in remanding the main appeal as denovo consideration without touching upon the specific ground raised with regard to questioning the validity of service of notice under Section 143(2) of the Income-Tax Act, 1961?*
> *4. Whether in the facts and in the circumstances of the case and in law the Tribunal was justified in non-consideration of the specific ground even after repeated representations through miscellaneous petition and thereby ignoring the very batch of contention that there cannot be any order of assessment in the absence of proper service of the notice under Section 143(2) on the appellants?*
> *5. Whether in the facts and in the circumstances of the case and in law, the Tribunal was justified in dismissing the miscellaneous petition by citing the decision in the case of V.Narayanan v Deputy/Assistant CIT (2010), 2 ITR (Trib) 446*

Chennai.
6. Whether in the facts and in the circumstances of the case and in law the Tribunal was justified in saying that it cannot be presumed that the Tribunal has given direction to the Income Tax Officer to enlarge the time without deciding the very question with regard to validity of service of notice under Section 143(2) of the Income Tax Act?"

3. The primary issue raised is the validity of service of notice u/s 143(2) of the Act. The Tribunal has proceeded on the basis that substituted service is not permissible unless the assessing authority establishes that (i) the addressee has refused service, (ii) the addressee cannot be found and (iii) there is no agent or other person upon whom service could have been taken.

4. The Tribunal has returned a finding to the effect that none of the ingredients as aforesaid have been satisfied in the present case and has hence remanded the matter for de novo consideration. The records are unavailable. Learned counsel are also unable to confirm whether the remanded proceedings have been taken up for completion by the Income-tax officer.

5. The Tribunal has noted that the alternate address of the assessee was available with the assessing officer as the intimation under Section 143(1) dated 9.6.2004, has been sent to that address. However, despite this, the assessing officer has made no attempt to serve notice under Section 143(2) on that address.

6. Notice was sent at the first instance by registered post on

21.10.2004, which was returned with the endorsement *'no such person at the above address'*. Upon receipt of the returned cover, the assessing officer had only five days within which service of notice Section 143(2) was to be effected, and hence, and to ensure completion of service, he had sent the same both by speed post and affixture. The fate of notice dated 28.10.2004 served by speed post is unknown.

5. In the meanwhile, the assessee / respondent had contested the service of notice by affixture on the ground that the rules pertaining to service under the Code of Civil Procedure permitted resort to substituted service only in certain demarcated circumstances.

6. The Tribunal ultimately concludes that in light of the factual backdrop as aforesaid, the ex-parte assessment under Section 144 had been completed without effective opportunity being provided to the assessee.

7. Learned counsel are not in possession of the material facts to enable us to answer the questions admitted. The order of the Tribunal is also cryptic and throws no light in this regard. In such circumstances, and since the the matter has only been remanded for de novo consideration, we dismiss these tax case (appeals) returning the questions as unanswered. No costs.

[A.S.M., J] [G.A.M., J]
10.12.2024

Index: Yes/No
Neutral Citation: Yes
ssm

To

The Income Tax Officer,
Ward-III(2),
Coimbatore.

DR. ANITA SUMANTH.,J.
and
G. ARUL MURUGAN.,J.

ssm

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