

Civil Misc. Writ Petition (Tax) No. 611 of 2015

Dr. Sheo Murti Singh

Vs.

Commissioner Of Income Tax and another

Hon'ble Tarun Agarwala,J.

Hon'ble Surya Prakash Kesarwani,J.

The petitioner is a Doctor by profession. For the assessment year 2008-09 the petitioner filed his return of income on 27.3.2009 declaring his net income as Rs.1,20,036/-. The petitioner contends that he received a notice dated 21.5.2015 issued under Section 142(1) of the Income Tax Act (hereinafter referred to as the "Act") through which the petitioner came to know that proceeding under Section 148 of the Act had been initiated for reassessment of the income for the assessment year 2008-09. In response to the said notice, the petitioner filed an application praying that a certified copy of the inspector's report and a certified copy of the order sheet be given to enable the petitioner to proceed forward. The Income Tax officer vide its letter dated 10.7.2015 informed the petitioner that the petitioner should first comply with the notice under Section 142(1) of the Act and thereafter the details, as per his letter, would be provided. The petitioner, being aggrieved by the action of the respondent and initiation of the reassessment proceeding, has filed the present writ petition.

We have heard Sri Gaurav Mahajan, the learned counsel

for the petitioner along with Sri J.C.Bharadwaj, the learned counsel for the petitioner and Sri Ashok Kumar, the learned counsel for the Department.

The learned counsel for the petitioner submitted that for initiation of the proceedings under Section 148 of the Act, the essential requirement is, that a notice under Section 148 of the Act should have been served, which in the instant case has not been done till date and, consequently, the entire proceedings stood vitiated as no valid service of notice under Section 148 of the Act had yet been served upon the petitioner. The petitioner contends that the notice dated 25.3.2015 was issued under Section 148 of the Act, which came back unserved on 30.3.2015 and that the said notice was never served though it is alleged that service was made by the Department not at his residence, but at his clinic.

At the time, when the writ petition was entertained, we had directed the learned counsel appearing for the Department to produce with the original record since it was a local matter. The record has been produced to which we have perused and we find the following.

A notice dated 25.3.2015, under Section 148 of the Act, was sent by Speed Post at the residential address of the petitioner, which admittedly came back unserved. The record indicates that the Income Tax Officer deputed two Inspectors to make personal service of the said notice upon the petitioner. The Inspectors' report indicates that they went to serve the notice at the residence of the petitioner and found that the

petitioner had gone to his clinic. The Inspector thereafter, accordingly, went to the clinic where the petitioner was busy in his chamber, examining his patients. A request was sent by the Inspectors to meet the petitioner. The report indicates that the Inspectors waited at the clinic for almost half an hour, and thereafter, the petitioner came out and, at that stage, the notice was served which he refused on the ground, that he has no time to receive the notice as he has to go out on an emergency call. The report further indicates that the Inspectors tried to serve the notice upon the other members of the staff who all refused and, accordingly, the notice was thereafter affixed at the main door of the clinic. The fact of return of service and thereafter deputing the Inspector are also recorded on the order sheet. We also find that thereafter a notice under Section 142(1) of the Act was issued to the petitioner on 21.5.2015.

In the light of the aforesaid facts, the learned counsel for the petitioner contended that there was no proper service under Section 148 read with Section 282 of the Act along with Order V Rule 17 and Order V Rule 18 of the Code of Civil Procedure and, consequently, all the proceedings initiated pursuant to the notice under Section 148 of the Act are invalid and liable to be quashed.

Having heard the learned counsel for the petitioner and having perused the record, we are of the opinion, that a valid notice under Section 148 of the Act has been served upon the petitioner by refusal. In our opinion, such service by refusal is a valid service under Section 148 read with Section 282 of the Act and Order V Rules 17 and 18 of the C.P.C.

The contention of the learned counsel for the petitioner, that the provision with regard to the procedure of service as provided under Order V Rule 17 and 18 has not been complied, is patently erroneous. Order V Rule 17 clearly indicates that when the notice cannot be served, the serving officer shall affix the copy of the summons on the outer door or at some other conspicuous part of the house in which the petitioner ordinarily resides or carries on business. In the instant case, the Inspector's report clearly indicates that the petitioner personally refused and thereafter the notice was affixed at the outer door of his clinic. The contention that the service was not made at his residence, but at his clinic is immaterial. The fact remains, that the service was made at his business place and that the petitioner himself refused to accept the notice. The Inspector's report also indicates the time and manner of service which is in compliance with the Order V Rule 18 of the C.P.C. In the light of the aforesaid, we are of the opinion, that the service of the notice under Section 148 of the Act was validly made.

An alternative submission was made, namely, that the original assessment proceeding for the assessment year 2008-09 has not as yet been completed since the petitioner received the notice under Section 142(1) of the Act. In response to this attack, the learned counsel for the Department submitted that the definition of the word "assessment" as defined under Section 2(8) of the Act includes re-assessment and, therefore, a valid notice Section 142(1) of the Act had been issued. It was further contended that assessment

proceedings for the assessment year 2008-09 could not continue at this stage as the period for making such assessment had not been completed in view of the provisions of Section 142 of the Act.

On this issue, we are of the opinion, that once we have held that a valid notice under Section 148 of the Act had been issued, it is open to the petitioner to raise this objection before the assessing authority, as to whether the original assessment proceeding for the assessment year 2008-09 are pending or not and whether a valid notice under Section 142(1) of the Act has been issued. If such objections are filed, the assessing authority will consider the same while making the re-assessment order under Section 148 of the Act.

In view of the aforesaid, we do not find any merit in the writ petition and is dismissed.

The original record, which we have perused, is being returned to Sri Ashok Kumar, the learned counsel for the Department.

Before parting, we are of the opinion, that the Income Tax Officer had committed an error in not supplying the details as asked by the petitioner vide his letter dated 3.7.2015. It is not open to the Income Tax Officer to force the petitioner to comply with the notice issued under Section 142(1) of the Act as a condition precedent for supply of information that was demanded by him. We, accordingly, direct the Income Tax Officer to supply the information as demanded by the petitioner vide his letter dated 3.7.2015 within five working

days from the date of receipt of the certified copy of this order.

Dated : 5.8.2015

AKJ

(Surya Prakash Kesarwani,J.

(Tarun Agarwala,J.)