

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 1237/2007

02.01.2008

Decided on: January 02, 2008

**Commissioner of Income Tax-III
Central Revenue Building
New Delhi. Appellant**

Through Ms.Sonia Mathur, Adv.

versus

**Silver Streak Trading Pvt. Ltd.
4957, Sadhar Bazar
Delhi-110006. Respondent**

Through None

Coram:

**HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE V.B. GUPTA**

- 1. Whether the Reporters of local papers may be allowed to see the judgment? Yes**
- 2. To be referred to Reporter or not? Yes**
- 3. Whether the judgment should be reported**

in the Digest? Yes

MADAN B. LOKUR, J. (ORAL)

The Revenue is aggrieved by an order dated 3rd November, 2006 passed by

the Income Tax Appellate Tribunal, Delhi Bench 'D' in ITA No. 1820/Del/2002

relevant for the Assessment Year 1997-98.

2. The only issue that arises for our consideration is whether the notice sent by the Assessing Officer under Section 143(2) of the Income Tax Act, 1961

(for short the Act) was served upon the Assessee within the statutory period of

limitation of 12 months from the date of filing the return.

3. The Assessee filed its return of income on 30th November, 1997 along with an audited balance sheet. On 28th November, 1998, a notice was issued to

the Assessee by the Assessing Officer through speed post. The notice stated

that the case of the Assessee would be fixed for hearing on 8th December, 1998.

It appears that no proceedings took place on 8th December, 1998 apparently

because no one appeared on behalf of the Assessee.

4. According to the Assessee, a notice dated 21st October, 1999 was received by learned counsel for the Assessee who accepted the notice and

endorsed the office copy with the remark 'time barred notice received'.

According to the Assessee, this was the first time that it received a notice under Section 143(2) of the Act.

5. Thereafter, the Assessing Officer passed an assessment order under Section 144 of the Act raising a tax demand of Rs.34,37,635/-.

6. The assessee had filed an affidavit before the Assessing Officer

stating that it had not received any notice prior to the notice dated 21st October, 1999. In spite of the affidavit having been filed by the Assessee, no

steps were taken by the Revenue to ascertain whether in fact the notice dated

28th November, 1998 was served on the Assessee or not and what steps, if any,

had been taken to ascertain the factual position on or immediately after 8th

December, 1998 when no one appeared on behalf of the Assessee before the

Assessing Officer.

7. The Tribunal took the view that there was nothing on record to suggest that the notice dated 28th November, 1998 was, in fact, served upon the Assessee

on 30th November, 1998 (29th November, 1998 being a Sunday). In view of the

affidavit filed by the Assessee, it was incumbent upon the Revenue to make some

enquiry and to produce some material on record to show that the notice dated

28th November, 1998 had, in fact, been served on the Assessee before expiry of

the limitation period, otherwise, the affidavit of the Assessee would have to be

accepted as correct. No such material was brought on record by the Assessing Officer.

8. We find it little odd that when no one appeared on behalf of the Assessee on 8th December, 1998, the Assessing Officer did not take any steps to

find out whether the notice had been served upon the Assessee or not. Enquiries

could have been made at that point of time itself but for some reason the Assessing Officer sat back till October, 1999 before sending another notice to

the Assessee.

9. Under these circumstances, we are of the opinion that the Tribunal rightly took note of the affidavit filed by the Assessee that the only notice it

received was the one dated 21st October, 1999. The Tribunal rightly noted that

there no material was produced by the Revenue to suggest that the notice dated

28th November, 1998 was, in fact, served upon the Assessee within the time

prescribed by law.

10. Learned counsel for the Revenue relied upon a decision rendered by this Court in Commissioner of Income Tax v. Shankar Lal Ved Prakash, ITA No.1455/2006 decided on 6th November, 2006. We find that the decision relied

upon is distinguishable. In that case, the notice under Section 143(2) of the

Act was dated 25th August, 1998 and a hearing was fixed on 31st August, 1998.

According to the assessee therein, it received the notice only on 1st September,

1998 and it was held by this Court that it was a little unnatural that the assessee therein made no enquiry or correspondence alleging that the notice was

received after the due date and the proposed proceedings had, therefore, become

time barred. This Court did not accept the explanation of the assessee therein

that the envelope containing the notice had been ?foolishly destroyed? by it.

Under these circumstances, this Court presumed that the notice dispatched on

25th August, 1998 would have reached the assessee therein within a few days and

the onus was on the assessee therein to substantiate its contention that the

notice had been received by it on 1st September, 1998.

11. In so far as the present case is concerned, it is not the case of the

Assessee that it ever received notice dated 28th November, 1998. In fact, its case has been that the only notice ever received by it was the one dated 21st October, 1999. In the duplicate copy of the notice dated 21st October, 1999,

learned counsel for the Assessee had made an endorsement that he has received

the time barred notice. This was followed by an affidavit by the Assessee stating that it had not received any notice prior to the notice dated 21st October, 1999. In a case such as this, the onus is clearly upon the Revenue to

show that the notice dated 28th November, 1998 was, in fact, served on the

Assessee within the time prescribed by law. The Revenue has not been able to

discharge its onus either before the Tribunal or before us. We, therefore, find

that no substantial question of law arises and the appeal is dismissed.

12. We have been noting for the last several months that the Revenue mechanically files frivolous appeals and despite our imposing costs on the

Revenue from time to time it has not resulted in any re-thinking on the part of

the Income Tax Department with regard to the filing of frivolous appeals. We

have noted on several occasions that a large number of persons in the Registry

are put to inconvenience because of the filing of frivolous appeals and even the

time of the Court is wasted in dealing with unimportant appeals. On the other

hand, serious matters which ought to deserve attention get sidelined because of

this attitude of the Revenue which needs to be deprecated.

13. Consequently, while disposing of this appeal, we do so with costs of Rs.10,000/- to be deposited by the Revenue by a cheque made out in favour of the

Registrar General of this Court within four weeks from today. The Registrar

General will keep aside this amount for utilization for juvenile justice.

14. List for compliance on 4th February, 2008.

MADAN B. LOKUR, J

**JANUARY 02, 2008 V.B. GUPTA, J
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