

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 1122/2006

**COMMISSIONER OF INCOME TAX Appellant
Through Mrs. Prem Lata Bansal, Adv.**

versus

**H.P.BHARDWAJ and SONS HUF Respondent
Through Mr.K.Sampath with
Mr.R.K. Raghavan, Advs.**

CORAM:

HON'BLE MR. JUSTICE MADAN B. LOKUR

HON'BLE DR. JUSTICE S. MURALIDHAR

O R D E R

22.11.2007

1. The Revenue is aggrieved by an order dt. 31st Jan., 2006 passed by the Income-tax Appellate Tribunal ('Tribunal'), Delhi Bench 'E' in ITA No. 4269/Del/2005 relevant for the asst. yr. 2002-03.

2. The short issue that has been urged in this case is whether the notice sent to the assessee on 31st July, 2003 under s. 143(2) of the IT Act, 1961 (for short 'the Act') was served upon the assessee on the same day or not.

The admitted position is that if it was not so served on the assessee then the proceedings would be barred by time. All through the assessment proceedings before the AO, the Commissioner of Income-tax (Appeals)

[CIT(A)] and before the Tribunal, the case of the Revenue was that the notice dt. 31st July, 2003 had been sent by registered post. In fact, it was not the contention of the Revenue before any of the above authorities that the notice had been served through a process server.

3. After dismissal of the appeal filed by the Revenue before the Tribunal, a rectification application under s. 254(2) of the Act was filed by the Revenue in which it was contended, for the first time, that the notice was served on the assessee through a process server on 31st July, 2003 itself. The Tribunal by its order dt. 22nd Sept., 2006 rejected this contention and held that in exercise of its jurisdiction under s. 254(2) of the Act it could not review the earlier order. The Revenue has preferred an appeal being IT Appeal No. 414 of 2007 against that decision, which is being heard and disposed of along with the present appeal.

4. Insofar as the present appeal is concerned, the Revenue has annexed a document showing receipt of the notice by a person whose name is illegible. According to learned counsel for the assessee, the signature is not of any person known to the assessee.

5. We also find from a perusal of the order of the CIT(A) that he has recorded that he has seen the assessment records before passing his order and there is no mention by him of any notice that was served on the assessee by the process server on 31st July, 2003. Clearly, the document now produced was not in the record seen by the CIT(A). Considering this fact coupled with the fact that the case of the Revenue never was, prior to its application under s. 254(2) of the Act, that the notice has been served on the assessee through a process server, we are of the view that no error can be found with the order passed by the Tribunal.

6. We may also mention that in CIT vs. Vardhman Estate (P) Ltd. (2007) 208 CTR (Del) 251 : (2006) 287 ITR 368 (Del) , a similar contention was sought to be urged on behalf of the Revenue. When it was put to learned senior standing counsel of the Revenue whether there existed any provision of law which required the Tribunal to call for the assessment records and peruse it themselves, the answer was in the negative. As far as the present case is concerned, in light of what has been discussed, we hold that the Tribunal committed no error in proceeding on the basis of the record which was available before it.

7. No substantial question of law arises.

8. Dismissed.

MADAN B. LOKUR, J

NOVEMBER 22, 2007 S. MURALIDHAR, J

Kapil