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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1382 OF 2014

The Commissioner of Income Tax-3

..Appellant

Versus

Abacus Distribution Systems (India) Pvt. Ltd.

..Respondent

.....
Mr. Ashok Kotangale a/w Ms. Padma Divakar a/w Arun Nagarjun for the Appellant.

Mr. Girish Dave a/w Ms. Kadambari Dave i/b. Atul K. Jasani for the Respondent.

.....
**CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.**

DATE : 7th FEBRUARY, 2017

PC.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 6th December, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2006-07.

2. The Revenue has urged the following question of law for our consideration:-

“Whether on the facts and in the circumstances of the case and in law the Tribunal was justified in holding that the service of notice under Section 143(2) of the Income Tax Act on the earlier given address of the Assessee was barred by limitation of

time when the same was served within the prescribed time limit as per the provision of Section 282 (1)(a) of the Income Tax Act?”

3. The respondent-assessee filed its return of income on 20th November, 2006 declaring its income as Nil wherein its address is mentioned as under :-

“81/83-A, Mittal Court, 8th Floor, “A” Wing, Nariman Point, Mumbai-4-00 021.”

On 23rd November, 2006 the respondent-assessee filed a communication to the Assessing Officer intimating him that the address of the respondent-assessee had now changed and its new address was intimated as under:-

“Ruby House, First Floor, J. K. Savant Marg, Dadar (W), Mumbai-400 028.”

4. On 28th November, 2007 a notice under Section 143(2) of the Act was issued by the Assessing Officer to the respondent-assessee at its original address of Nariman Point, Mumbai. On 29th November, 2007 Income Tax Inspector filed a report stating that he had visited the office premises of Nariman Point, Mumbai to serve the notice under Section 143(2) of the Act but no such company was found in occupation of the address as communicated in the return of income. On 30th November, 2007 the Assessing Officer handed over the notice under Section 143(2)

of the Act to the Post Office for service of the Section 143(2) notice to the respondent-assessee. However, the communication handed over to the post office on 30th December, 2007 was addressed to the erstwhile office of Nariman Point, Mumbai of the respondent-assessee. On 11th December, 2007 the Assessing Officer once again sent a notice under Section 143(2) by post to the respondent-assessee. However, this time it was addressed to the new office premises of the respondent-assessee at Dadar, Mumbai. On 12th December, 2007 a notice was served upon the respondent-assessee fixing the hearing for the subject assessment year on 17th December, 2007.

5. Immediately on receipt of the above notice the respondent-assessee on 13th December, 2007 had objected to the assessment proceedings for the subject Assessment Year on the ground that no notice under Section 143(2) of the Act has been served within the statutory period of 12 months as provided in proviso to Section 143(2) of the Act. Notwithstanding the above, on 9th September, 2010 the Assessing Officer consequent to the directions of the Dispute Resolution Panel passed an Assessment Order under Section 143(3) read with Section 144C(13) of the Act.

6. Being aggrieved with the order dated 9th September, 2010, the

respondent-assessee filed an appeal to the Tribunal. The impugned order of the Tribunal allowed the assessee's appeal holding that in terms of Section 143(2) of the Act, it is mandatory for the Assessing Officer to serve a notice under Section 143(2) of the Act before the expiry of 12 months from the end of the month in which the return is furnished. In the present case, the return of income was filed on 20th November, 2006 therefore the time to serve a notice under Section 143(2) would expire on 30th November, 2007. It is undisputed position that the respondent-assessee had informed the Assessing Officer as far back as 23rd November, 2006 of the change in its address from Nariman Point, Mumbai to Dadar(W), Mumbai. Notwithstanding the above, on 30th November, 2007 the Assessing Officer sent a notice under Section 143(3) by post at the old address. It was only later on 11th December, 2007 that the Assessing Officer sent a notice under Section 143(2) to the respondent-assessee at its new address which was communicated to the Assessing Officer as far back as 23rd November, 2006.

7. In the above view, taking into account the fact that the respondent-assessee had objected at the very first instance to the assessment being taken up for completion, in the absence of the mandatory requirement of Section 143(2) of the Act being satisfied i.e. service thereof within one

year from the end of the month in which the return is filed. The impugned order holds the assessment order dated 9th September, 2010 for the subject assessment year to be null and void.

8. Mr. Kotangale on behalf of the Revenue submits that the notice under Section 143(2) of the Act was given to the post office on 30th November, 2007. Therefore the date of giving the notice to the post office on 30th November, 2007 should be taken as the date of service of the notice to the respondent-assessee and the scrutiny assessment proceedings for the subject assessment year cannot be considered to be time barred.

9. It is undisputed position before us that the notice under Section 143(2) of the Act which was handed over to the post office on 30th November, 2007 was incorrectly addressed i.e. it was addressed to the respondent-assessee's old office at Nariman Point, Mumbai. In terms of Section 282 of the Act as existing in 2007 a notice may be served on the person named therein either by post or as if it were a summons issued by the Court under the Code of Civil Procedure. Section 27 of the General Clauses Act provides that where any Central Act requires a document to be served by post where the expression "serve" or "given" or "sent" shall be deemed to have been effected by properly addressing, prepaying and

posting. In such cases, unless the contrary is proved which would be deemed to have been served at the time when the letter would be delivered in the ordinary course of post to the addressee. In this case admittedly the envelope containing the notice was wrongly addressed. Thus the presumption under Section 27 of the General Clauses Act cannot be invoked. It is very pertinent to note that subsequently i.e. on 11th December, 2007 the Assessing Officer served the notice upon the correct address of the respondent-assessee. This posting to the correct address was on the basis of the record which was already available with the Assessing Officer by virtue of letter dated 23rd November, 2006 addressed by the respondent to the Assessing Officer. Admittedly there was no fresh intimation/knowledge received by the Assessing Officer after 23rd November, 2006 and before 11th December, 2007 giving the new address of the respondent-assessee. Moreover, as the objection to the Assessment proceeding was taken much before the Assessment proceedings were completed on the basis of no service of notice before the expiry of the period, the Assessment Order will not be saved by Section 292BB of the Act.

10. In the above view, the impugned order of the Tribunal renders a finding of fact that the notice under Section 143(2) has not been served at

the correct address on or before 30th November, 2007 which is not shown to be incorrect. It follows that Assessment proceedings concluded on the basis of such invalid notice is void.

11. In the above view, as the position is self evident on a plain reading of Section 143(2) of the Act read with Section 127 of the General Clauses Act, thus no substantial question of law arises for our consideration.

12. Accordingly, Appeal is dismissed. No order as to costs.

(A. K. MENON, J.)

(M. S. SANKLECHA, J.)

Wadhwa