Bijoy and Company Vs. Commissioner of Income-tax

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Court : Rajasthan

Decided On : Sep-18-1978

Reported in : [1979]120ITR641(Raj)

Judge : Dwarka Prasad and; K.S. Sidhu, JJ.

Acts : Income Tax Act, 1961 - Sections 147, 148, 256(1) and 256(2)

Appeal No. : D.B. Civil Income-tax Case No. 74 of 1973

Appellant : Bijoy and Company

Respondent : Commissioner of Income-tax

Advocate for Def. : L.R. Mehta, Adv.

Advocate for Pet/Ap. : S.M. Mehta, Adv.

Judgement :

Dwarka Prasad, J.

1. This application has been presented by the assessee under Section 256(2) of the I.T. Act, 1961, praying therein that the Tribunal may be directed to state the case and refer three questions to this court for its opinion. We may briefly state the facts which have given rise to this application.

2. The 1TO, H-Ward, Jaipur, issued notices to the two partners of the petitioner-firm, M/s. Bijoy and Company, Jaipur, for reassessment after obtaining the sanction of the CBDT. The assessment, which was sought to be reopened, related to the assessment year 1951-52, and the period of 16 years was to expire on March 31, 1968. The notices for reassessment under Sections 147/148 of the I.T. Act, 1961, were issued on March 28, 1968, and one set of such notices was sent through an inspector of the I.T. department, while another set of notices was sent by registered post. So far as the notices sent through the inspector of the I.T. department are concerned, a report was submitted by the inspector that the whereabouts of the assessee-firm were not traceable and he affixed the copies of the notices on the outer doors of the residential houses of the partners, namely, Hari Kishan and Sagarmal, on March 29, 1968, The notices sent by registered post were received back with the endorsement of refusal, so far as Badri Narain, partner, was concerned, but as regards Hari Kishan the notices were returned by the postal authorities with the endorsement that the addressee was not found. The ITO treated the service as sufficient and as the assessee did not appear, the reassessment proceedings were completed ex parte. On appeal, the AAC held that service of notices was not properly effected upon the

partners of the assessee-firm and as such the reassessment proceedings were vitiated. The department took the matter in appeal before the Income-tax Appellate Tribunal. The Tribunal, by its order dated April 27, 1972, held that so far as the notices sent through the inspector of the I.T. department were concerned, the service thereof could not be held to be sufficient in law without examining the inspector of income-tax concerned.

3. As regards the notices issued by registered post, the Tribunal took notice of the affidavit filed by Badri Narain to the effect that the notice was not presented before him nor he refused service thereof and the Tribunal remanded the matter to the ITO for examining the postman concerned, if available, and thereafter to examine the assessee, Badri Narain, if necessary. Thus, in substance, the Tribunal remanded the matter to the ITO for examining evidence in respect of the question as to whether service was properly effected upon the partners of the assessee-firm, within the time permissible under the law, in respect of the reassessment proceedings.

4. The assessee-firm submitted an application to the Tribunal under Section 256(1) of the I.T. Act and requested it to refer three questions to this court. The Tribunal declined to make a reference and rejected the application of the assessee by its order dated August 28, 1972, on the ground that in view of the order of remand passed by the Tribunal, it was premature at this stage to make any reference to this court.

5. We have heard the learned counsel for the assessee and the learned counsel representing the revenue.

6. The question, which is raised at present, related to the service of notices regarding the initiation of reassessment proceedings against the assessee-firm. The Tribunal has not given any conclusive finding in respect of this matter and has remanded the case to the ITO concerned, vide its order dated April 27, 1972, with certain directions. Learned counsel for the assessee, however, urged that in para. 8 of its order dated April 27, 1972, the Tribunal held that in the present case, the reassessment proceedings had been validly initiated before the time-barring date, because the notices were issued by the ITO for reassessment before such date and as such a final finding has been recorded by the Tribunal.

7. We have closely examined the order passed by the Tribunal remanding the case to the ITO and we are of the view that the Tribunal did not give any definite finding in the matter. If the Tribunal would have held that the reassessment proceedings were properly initiated, then it would not have proceeded to pass an order of remand, in order to find out whether the service of notices was properly effected on Badri Narain, one of the partners of the assessee-firm. The Tribunal has also directed the ITO to examine the I.T. inspector in order to find out whether the service was properly effected by affixation or not. The concluding part of the order of the Tribunal dated April 27, 1972, convincingly shows that the stray observation made by the Tribunal in para. 8 of its aforesaid order was not a final expression of its opinion, in respect of the question as to whether the proceedings for reassessment are initiated merely by issuance of notices before the time-barring date or the requirement of law is that the notices should not only be issued but they should also be served before the said date.

8. We may also like to point out in this connection that the Punjab High Court whose decision in Seth Balkishan Das v. 671 was sought to be relied upon by the Tribunal,

has itself in a later decision in Tikka Khushwant Singh v. CIT distinguished its earlier judgment in Seth Balkishan Das's case and held that the matter in the earlier case before the Full Bench was absolutely different. The Punjab High Court in Tikka Khushwant's case has held that the words 'issued' and 'served' as used in Sections 148 and 149 of the I.T. Act, 1961, are interchangeable and the word 'issue ' has been used in the same sense in which the word 'serve ' has been used. As a matter of fact, the same words occurring in Section 34 of the Indian I.T. Act, 1922, were given judicial interpretation by the Supreme Court in Banarsi DM v. ITO : [1964]53ITR100(SC) and it was held that the expressions ' issued' and 'served' used therein were interchangeable terms and in the legislative practice of our country they are sometimes used to convey the same idea. In CWT v. Kundan Lal Behari Lal : [1975]99ITR581(SC) the Supreme Court again reiterated its earlier view, while dealing with Sections 17 and 18 of the W.T. Act, 1957, and expressed the opinion that the expression ' issued ' takes in the entire process of sending notices as well as service thereof and, therefore, the word ' issued ' can only be interpreted to mean as ' served '.

9. We are completely in agreement with the Tribunal in holding that at this premature stage of passing an order of remand no question of law arises, which can be referred to by the Tribunal to this court under Section 256(2) of the I.T. Act, 1961.

10. With the observations made above, the application for reference is dismissed.