
I.M. Constructions Pvt. Ltd. Vs Commissioner of Income Tax

Writ Petition (C) 8068 of 2011

Court: Delhi High Court

Date of Decision: March 27, 2012

Acts Referred:

Income Tax Act, 1922 "Section 34" Income Tax Act, 1961 "Section 142(1), 143(3), 147, 148, 148(1)"

Citation: (2012) 210 TAXMAN 83

Hon'ble Judges: Sanjiv Khanna, J; R.V. Easwar, J

Bench: Division Bench

Advocate: Ajay Kumar Porwal, for the Appellant; N.P. Sahni, Senior Standing Counsel, for the Respondent

Judgement

Sanjiv Khanna, J.

I M Constructions Pvt. Ltd., the petitioner company has filed the present writ petition for quashing the notice dated

5.8.2011 u/s 142(1) of the Income Tax Act, 1961 ("Act", for short) in respect of assessment year 2004-05. The contention of the petitioner is that

they have not been served with the notice u/s 148 of the Act dated 22.3.2011 and therefore, the proceedings pursuant to the notice u/s 142(1)

dated 5.8.2011 are void ab initio and illegal. Ld. counsel for the petitioner submits that the notice u/s 148 is required to be served in accordance

with Section 282 of the Act and in case of non-service of notice, entire proceedings are of no consequence. It is stated in the petition that the

return for the assessment year 2004-05 was filed on 10th February, 2005, manually with the Income Tax Officer 11(3) and in the said return the

address mentioned was E-72, Mohan Garden, Pipalwala Road, Uttam Nagar, New Delhi-30. The return is signed by Inder Mohan Sharma, s/o H

C Shastri, Director of the petitioner company. The contention of the petitioner is that in February, 2006 they had written a letter enclosed as

Annexure P2, informing the Assessing Officer about the change of address to X-1, Okhla Industrial Area, Phase-II, New Delhi-20. Along with the

letter, they had also enclosed copy of the certificate issued by the Registrar of Companies recording change of the registered address. It is

submitted that the petitioner has been filing returns for the subsequent assessment years stating the changed/new address i.e. X-1, Okhla Industrial

Area, Phase-II, New Delhi-20.

2. Ld. counsel for the respondent/Revenue, on the other hand, has referred to the counter affidavit. It is submitted that notice u/s 148 of the Act

was issued at the address mentioned in the return and was sent by speed post on 22.3.2011 by the Assessing Officer (see list of documents at

page 53). The Assessing Officer also relies upon the downloaded data available on the income tax website in which the address mentioned of the

assessee was/is E-72, Mohan Garden, Pipalwala Road, Uttam Nagar, New Delhi-30. It is submitted that the petitioner should have ensured that

the address is rectified and recorded in the PAN records. With regard to the letter dated 10th February, 2006, it is submitted that it is addressed

to Income Tax Officer Ward 11(1), who is not the Assessing Officer of the petitioner and the Assessing Officer of the petitioner is the Income Tax

Officer, Ward 11(3).

3. We do not appreciate and accept the stand of the Revenue that they are required to look and refer the income tax website and are not required

to verify records and the subsequent returns to ensure that the notices are sent to correct addresses. The Assessing Officer in case of doubt should

examine and verify whether new/changed address is mentioned in the returns filed for subsequent years. Further, if the assessee has informed

change of address, this should be recorded and noted. However, in the present case no notice/letter was written to the Assessing Officer about

change/new address.

4. Moreover, for several reasons, we are not inclined to accept the prayer in the writ petition. The petitioner has not disputed or denied the fact

that the notice dated 22.3.2011 was issued to the petitioner at the address mentioned on the income tax return. This fact is also mentioned in the

letter dated 18.10.2011 written by the petitioner to the Assessing Officer. This shows that the petitioner was aware and knew that the Assessing

Officer has issued the notice u/s 148 of the Act at the address mentioned in the return. A clear distinction between ""issue"" and ""service"" of the

notice has been drawn by the Supreme Court in the case of R.K. Upadhyaya Vs. Shanabhai P. Patel, . Issue of notice within the prescribed time is

a mandatory requirement and service of notice is a procedural requirement before completing the assessment. In the said decision it has been held

as under :

Section 34, conferred jurisdiction on the income tax Officer to reopen an assessment subject to service of notice within the prescribed period

Therefore, service of notice within limitation was the foundation of jurisdiction. The same view has been taken by this court in J.P. Jani, Income

Tax Officer, Circle IV, Ward G, Ahmedabad and Another Vs. Induprasad Devshanker Bhatt, as also in COMMISSIONER OF Income Tax,

BOMBAY CITY I Vs. ROBERT J. SAS AND OTHERS. S. SEETHAI ACHI : INTERVENER., The High Court, in our opinion, went wrong

in relying upon the ratio of Banarasi Devi Vs. Income Tax Officer, Calcutta, in disposing of the case in hand. The scheme of the 1961 Act so far as

notice for reassessment is concerned is quite different. What used to be contained in section 34 of the 1922 Act has been spread out into three

sections, being sections 147, 148 and 149, in the 1961 Act. A clear distinction has been made out between ""issue of notice"" and ""service of

notice"" under the 1961 Act. Section 149 prescribes the period of limitation. It categorically prescribes that no notice u/s 148 shall be issued after

the prescribed limitation has lapsed. Section 148(1) provides for service of notice as a condition precedent to making the order of assessment.

Once a notice is issued within the period of limitation, jurisdiction becomes vested in the income tax Officer to proceed to reassess. The mandate

of section 148(1) is that reassessment shall not be made until there has been service. The requirement of issue of notice is satisfied when a notice is

actually issued. In this case, admittedly, the notice was issued within the prescribed period of limitation as March 31, 1970, was the last day of that

period. Service under the new Act is not a condition precedent to conferment of jurisdiction on the income tax Officer to deal with the matter but it

is a condition precedent to the making of the order of assessment. The High Court, in our opinion, lost sight of the distinction and under a wrong

basis felt bound by the judgment in Banarasi Devi Vs. Income Tax Officer, Calcutta, . As the income tax Officer had issued notice within limitation,

the appeal is allowed and the order of the High Court is vacated. The income tax Officer shall now proceed to complete the assessment after

complying with the requirements of law. Since there has been no appearance on behalf of the respondents, we make no orders for costs.

5. The aforesaid paragraph also shows that the requirement stipulated in Section 149 of the Act is ""issue of notice"" and not ""service of notice"",

which was the requirement u/s 34 of the Income Tax Act, 1922. For the sake of convenience, we are reproducing Section 149 of the Act, which

reads as under :

(1) No notice u/s 148 shall be issued for the relevant assessment year, - (a) in a case where an assessment under sub-section (3) of section 143 or

section 147 has been made for such assessment year, -

(i) If four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (ii) or sub-clause (iii);

(ii) If four years, but not more than seven years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax

which has escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year;

(iii) If seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax

which has escaped assessment amounts to or is likely to amount to rupees one lakh or more for that year;

(b) In any other case, - (i) If four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (ii) or

sub-clause (iii);

(ii) If four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax

which has escaped assessment amounts to or is likely to amount to rupees twenty-five thousand or more for that year;

(iii) If seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the income chargeable to tax

which has escaped assessment amounts to or is likely to amount to rupees fifty thousands or more for that year.

Explanation : In determining income chargeable to tax which has escaped assessment for the purposes of this sub-section, the provisions of

Explanation 2 of section 147 shall apply as they apply for the purposes of that section.

(2) The provisions of sub-section (1) as to the issue of notice shall be subject to the provisions of section 151.

(3) If the person on whom a notice u/s 148 is to be served is a person treated as the agent of a non-resident u/s 163 and the assessment,

reassessment or recomputation to be made in pursuance of the notice is to be made on him as the agent of such non-resident, the notice shall not

be issued after the expiry of a period of two years from the end of the relevant assessment year.

6. In the present case, the assessment proceedings are still pending and have not culminated in passing of any order. In the meanwhile, the

petitioner-assessee has come to know about the said assessment proceedings. In these circumstances, the assessee can be treated as ""served"" with

the notice u/s 148 of the Act, which was earlier issued at the address mentioned in the return. The assessee can now file the return of income

pursuant to the said notice and thereafter the assessment proceedings can continue.

7. We may notice that the stand of the respondent-Revenue is that the notice issued at the address mentioned in the return was not received back

unserved and therefore, the Assessing Officer had proceeded on the presumption that the notice was duly served. The said presumption as per the

petitioner stands rebutted as the addressee had shifted or changed address. In view of what we have indicated and stated, non-receipt/non-service

of the notice by post is inconsequential.

8. We record that the Id. counsel for the Revenue has submitted that they have made further enquiries with regard to occupants of E-72, Mohan

Garden, Pipalwala Road, Uttam Nagar, New Delhi-30. The said property it is stated is in possession of one Lalit Kumar Sharma and his family

and his mother Smt. Santosh Sharma is the owner. He states that Inder Mohan Sharma is known to them. We are not basing our decision the said

aspect as enquiries have been conducted after filing of the counter affidavit and no additional affidavit has been placed on record.
In view of the

findings recorded above, we do not see any merit in the contention that the proceedings should be quashed. The writ petition is accordingly

disposed of with liberty to the petitioner to file return by treating the notice u/s 148 of the Act as having been duly served. In the facts of the case

there will be no order as to costs.