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TAX FLASH NEWS

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Service of notice on the authorised representative of the taxpayer is deemed to be served on the taxpayer – Supreme Court

Background

Recently, the Supreme Court in the case of Dharam Narain[1] (the taxpayer) held that service of notice on the authorised representative[2] of the taxpayer is deemed to be served on the taxpayer since the taxpayer was not available to receive the notice sent by the registered post on two occasions. Accordingly, there is sufficient compliance of the requirement under the provisions of Section 143(2) of the Income-tax Act, 1961 (the Act).

Facts of the case

- The taxpayer is a proprietor and filed his income-tax return. As per the provisions of Section 143(2) of the Act the notice has to be served on the taxpayer by 30 October 2006.
- During the assessment proceedings, a notice was issued to the taxpayer on 16 October 2006 which was dispatched on 18 October 2006 by registered post. However, there were two occasions, the notice sent by registered post could not be served on the taxpayer as he was not available. Subsequently, it was served on the authorised representative of the taxpayer on 19 October 2006.
- The issue raised by the taxpayer by filing a writ petition before the High Court stating that whether the requirement under Section 143(2) of the Act was met by the tax department by serving a notice to the authorised representative.
- The High Court allowed the writ petition filed by the taxpayer taking a view that the condition of service of notice within due date was not satisfied. The service of notice on the authorised representative of the taxpayer could not be treated as service of notice on the taxpayer.

Supreme Court decision

- The Supreme Court observed that the facts of the present case is peculiar and hence, the case is to be decided on the facts of the case rather than merits of the issue.
- The taxpayer was not available to receive the notice sent by registered post as many as on two occasions. The service of notice on 19 October 2006 on the authorised representative of the taxpayer whom the taxpayer disowns, is sufficient to draw an inference of deemed service of notice on the taxpayer and sufficient compliance of the requirement of Section 143(2) of the Act.
- The Supreme Court observed that the High Court was not right in coming to the impugned conclusion in the facts of the instant matter.

Our comments

The issue of whether service of notice on the authorised representative of the taxpayer is deemed to be served on the taxpayer, has been a matter of debate before the courts.

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[1] ITO v. Dharam Narain (Civil Appeal No(s). 2262 of 2018) – Taxsutra.com

[2] Subsequently disowned by the taxpayer

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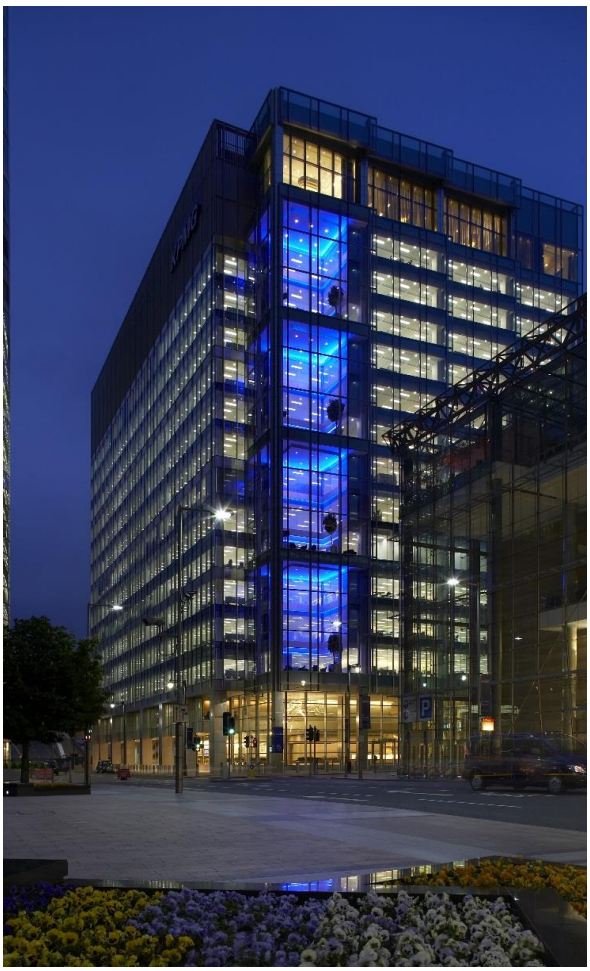
The Punjab and Haryana High Court in the case of Modern Farm Services[3] held that a notice under Section 148(1) of the Act served on the taxpayer through its accountant, being its representative, was valid and legal. Further, the Madras High Court in the case of Smt. Sushila Devi[4] held that a notice under Section 143(2) on the taxpayer's authorised representative is valid service of notice in absence of intimation to revenue about change of address.

The Supreme Court in the present case has held that service of notice on the authorised representative is deemed to be served on the taxpayer since the taxpayer was not available to receive the notice sent by the registered post on two occasions.



[3] Modern Farm Services v. CIT [2015] 228 Taxman 106 (P&H)
[4] CIT v. Smt. Sushila Devi [2014] 45 taxmann.com 467 (Mad)

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