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Revenue may furnish requisite material to prove service of notice if assessee denies receipt of the same

Summary – The Gauhati High Court in a recent case of Smt. Gita Rani Ghosh., (the Assessee) held that when an assessee denies receipt of notice, it is imperative on part of revenue to produce requisite materials and, if available, such person who has sent notices.

Facts

- As the assessee case selected for scrutiny, notices, according to the revenue, were issued to the assessee under section 143(2) and 142(1). The said notices, according to the Assessing Officer, were served on assessee on 1-3-2004. According to the Assessing Officer, there was no response by the assessee, further notices were issued on 27-12-2004 and 15-2-2005 refixing the hearing on 19-1-2005 and 17-2-2005 respectively.
- According to the Assessing Officer, as the assessee did not respond to any of the notices aforementioned an assessment order was made on 31-3-2005 in terms of the provisions of section 144.
- Aggrieved by the *ex parte* assessment, the assessee preferred an appeal before the Commissioner (Appeals). The assessee contended that though the assessee received notices, the PAN and address mentioned therein was not that of the assessee.
- Thus, an *ex parte* assessment was made by the Assessing Officer, without serving any notice, as warranted by section 143(2) and section 142(1) which according to the assessee, was illegal & untenable in law. The Commissioner (Appeals) did not agree with the assessee.
- According to the Commissioner (Appeals) since the assessee did not respond to the notice meant for her the assessment made was legal & valid and could not be interfered with.
- On second appeal, the Tribunal accepted the contentions of the assessee.
- On appeal.

Held

- Having noted the fact that the acknowledgement slip mentions the assessment year 2001-02 and not the assessment year 2002-03, the Tribunal has pointed out, correctly that doubt arises with regard to the assessment year for which the notices were served in terms of the acknowledgement slip.
- The Tribunal rejected this conclusion of the Commissioner (Appeals) by pointing out that this finding could have been accepted as correct, had the revenue been able to establish from the records that the notices, served upon the assessee-respondent herein, under the acknowledgment slip, were for assessment year 2002-03, but no such evidence had been brought to the Tribunal's notice or has been placed on record.

- In the words of the Tribunal, since it is well settled law that to establish the service of a notice upon the assessee, the initial onus is on the revenue and unless and until this onus is discharged, the service of a notice simply, on the basis of presumption and assumption, cannot be accepted. The Tribunal has also pointed out that the acknowledgement slip, in the case at hand, clearly mentions the assessment year 2001-02 and, therefore, in the absence of any material brought to its notice by the revenue, it was unable to accept the Commissioner (Appeals) findings that the assessment year, mentioned in the acknowledgement slip, was a mere mistake.
- Accordingly the HC held that the finding of fact, so recorded by the Tribunal, cannot be described as perverse. This apart, when the assessee had denied receipt of the notice for the assessment year 2002-03, it was for the Revenue to prove, by producing materials on record including witnesses, if any, that the notices sent to the assessee-respondent were for the assessment year 2002-03. This was, however, not done.
- Coupled with the above, the Tribunal, has also gone through various entries mentioned in the order sheet.
- It is not a case that the Tribunal's observations were based on no material or that the Tribunal's findings were wholly contrary to the materials on record. It could not be shown that before the Tribunal any material which could have proved beyond any shadow of doubt that notices under sections 142(3) and 142(1) were, indeed issued to assessee and served upon assessee respondent as the appellant claims.
- At any rate, when the assessee had denied receipt of notice, imperative it was, on the part of the revenue, to produce requisite materials and, if available, such person(s), who had sent the notices. Nothing of the sort was, however, done by the appellant.
- Because of what have been discussed and pointed out, the finding, reached by the Tribunal, cannot be described as perverse.
- The HC ruled in favour of the assessee and against the Revenue.