**Date of service of notice is date of its actual receipt by assessee**

**Summary – The Delhi ITAT in a recent case of OIP Sensor Systems India Liaison Office, (the Assessee) held that date of service of notice is date of its actual receipt by assessee.**

**Facts**

* The assessee, liaison office of a foreign company, filed its return on 18-10-2007. The notice under section 143(2) had been served upon the assessee on 1-10-2008, which was beyond the prescribed time limit. The assessee claimed that said notice was invalid and void.
* The Assessing Officer, however, rejected this objection on ground that 'service of notice by post' had nowhere been defined in the Act, and as such, according to section 27 of the General Clauses Act, 1897 notice was properly addressed and sent by speed post. He completed assessment accordingly.
* On appeal, the assessee submitted that assessment was barred by limitation.

**Held**

* The assessee contends that it is proviso substituted by the Finance Act, 2008, w.e.f. 1-4-2008, which is the governing proviso in the case at hand. The department, per contra, is of the view that it is the erstwhile proviso which is applicable and not the amended one.
* The stand of the assessee in this regard, is that the amendment bringing in the new proviso is a procedural amendment and it is, therefore, applicable to pending assessments including the assessment of the assessee.
* Undeniably, so far as the aspect of limitation is concerned, the governing provisions regarding the limitation are procedural provisions and, hence, retrospective in nature, a position also recognized by the CBDT while issuing Circular No. 1 of 2009, dated 27-3-2009, which is binding on the taxing authorities.
* In keeping with the above, since the return in this case was filed on 18-10-2007, the limitation for service of notice under section 143(2), in accordance with the applicable proviso to section 143(2)(ii), would be six months from the end of the financial year in which the return is furnished. The notice under section 143(2) having been issued on 30-9-2008, is, clearly, beyond the limitation prescribed.
* The next point raised by the assessee is that date of service of the notice under section 143(2) is the date of the actual service and not the date of issuance of such notice. The authorities below have taken the date of issuance of notice, i.e., 30-9-2008 as the deemed date of service, seeking to invoke the provisions of section 27 of the General Clauses Act. The assessee, on the other hand, maintains that since the notice was served on 1-10-2008, it is this date which is the date of service of notice and which date is beyond the limitation prescribed by the applicable proviso to section 143(2)(ii).
* The amended proviso to section 143(2)(ii) is the specific provision governing the limitation in question. Therefore, there is no justification in taking recourse to the provisions of the General Clauses Act.
* The contention of the assessee is accepted and it is held that the authorities below have erred in taking the date of issuance of the notice under section 143(2), i.e., 30-9-2008 as the deemed date of the service of such notice on the assessee. In fact, in view of the above, the date of service of notice is the date of its actual receipt by the assessee, i.e., 1-10-2008.
* The notice under section 143(2) was served on the assessee beyond the time limit prescribed by the proviso to section 143(2)(ii) as applicable. Accordingly, all proceedings pursuant to such notice are held to be illegal.