

Notice can be affixed at main door of assessee's premises if he refuses to receive it

Summary – The High court of Allahabad in a recent case of Dr. Sheo Murti Singh, (the Assessee) held that where Income Tax Officer deputed two Inspectors to make personal service of notice under section 148 upon assessee but assessee refused to receive said notice and, thereafter notice was affixed at main door of assessee's clinic, there was valid service of notice under section 148 upon assessee

Facts

- The assessee was a doctor by profession. He had filed his return of income for the assessment year 2008-09. He later received a notice dated 21-5-2015 issued under section 142(1) through which he came to know that proceedings under section 148 had been initiated for reassessment of income for the assessment year 2008-09.
- In response the assessee filed an application seeking certified copies of the Inspectors' report and the order sheet to enable him to proceed forward. The Income Tax Officer informed the assessee that he should first comply with the notice under section 142(1) and thereafter the details, as per his letter, would be provided.
- On writ, the assessee contended that for initiation of proceedings under section 148, the essential requirement is that a notice under section 148 should have been served, which in the instant case had not been done till date and, consequently, the entire proceedings stood vitiated.

Held

- It is apparent from record that a notice under section 148 was sent by Speed Post at the residential address of the petitioner, which admittedly came back unserved. The Income Tax Officer deputed two Inspectors to make personal service of the said notice upon the petitioner, they went to serve the notice at the residence of the petitioner and found that the petitioner had gone to his clinic. The Inspectors, thereafter, went to clinic where the petitioner was busy in his chamber, examining his patients, the Inspectors waited at the clinic for almost half an hour, and, thereafter, the petitioner came out. At that stage, notice was served which he refused on the ground that he had no time to receive the notice as he had to go out on an emergency call, the Inspector tried to serve the notice upon other member of the staff who all refused and, accordingly, the notice was thereafter affixed at the main door of the clinic.
- On perusal of record, it appears that a valid notice under section 148 has been served upon the petitioner by refusal. Such service by refusal is a valid service under section 148, read with section 282 and Order V Rules 17 and 18 of the C.P.C.
- Order V Rule 17 of C.P.C. clearly indicates that when the notice cannot be served, the serving officer shall affix the copy of the summons on the outer door or at some other conspicuous part of the

house in which the petitioner ordinarily resides or carries on business. In the instant case, the Inspector's report clearly indicates that the petitioner personally refused and thereafter the notice was affixed at the outer door of his clinic. The contention that the service was not made at his residence, but at his clinic is immaterial. The fact remains that the service was made at his business place, and that the petitioner himself refused to accept the notice. The Inspector's report also indicates the time and manner of service which is in compliance with the Order V Rule 18 of the C.P.C. In the light of the aforesaid, the service of the notice under section 148 was validly made.

- An alternative submission was made, namely, that the original assessment proceeding for the assessment year 2008-09 has not as yet been completed since the petitioner received the notice under section 142(1).
- Once it has been held that a valid notice under section 148 had been issued, it is open to the petitioner to raise this objection before the assessing authority, as to whether the original assessment proceeding for the assessment year 2008-09 are pending or not and whether a valid notice under section 142(1) has been issued. If such objections are filed, the assessing authority will consider the same while making the reassessment order under section 148.
- In view of the aforesaid, no merit was found in the writ petition and same is dismissed.
- The Income Tax Officer had committed an error in not supplying the details as asked for by the petitioner. It would not be open to the Income Tax Officer to force assessee to comply with the notice issued under section 142(1) as a condition precedent for supply of information which was demanded. Accordingly, the Income Tax Officer is directed to supply the information as demanded by the petitioner.