THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 13.04.2010

+ **ITA 441/2010**

DIRECTOR OF INCOME-TAX … Appellant

- versus –

SOCIETY FOR WORLDWIDE INTERBANK FINANCIAL, TELECOMMUNICATIONS ... Respondent

Advocates who appeared in this case :-
For the Appellant : Mr Sanjeev Sabharwal
For the Respondent : None

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE V.K. JAIN

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)
CM No. 3927/2010

The delay in re-filing the appeal is condoned.

This application stands disposed of.

ITA 441/2010

1. The Revenue is in appeal against the Income Tax Appellate Tribunal's order dated 27.02.2009 in ITA No.2512/DEL/2001 pertaining to the Assessment Year 1997-98.

2. The only issue sought to be raised before us is with regard to the validity of the assessment proceedings. The admitted position is that the

assessee filed the return of income on 27.03.2000 and the assessment was completed on 31.03.2000. The learned counsel for the appellant/revenue contended before us that both the Commissioner of Income Tax (Appeals) and Income Tax Appellate Tribunal have returned findings of fact that the notice under Section 143(2) of the Income Tax Act, 1961 was issued on 23.03.2000, whereas the return of income was filed on 27.03.2000 and was served on the same date on the assessee.

3. The submission is that there was a mistake in the notice which recorded the date of issuance as 23.03.2000 whereas it was actually issued on 27.03.2000. He also placed reliance on Section 292 B of the said act.

4. We have examined the assessment order, the order passed by the Commissioner of Income Tax (Appeals) as well as impugned order passed by the Tribunal and have heard the submissions made by the learned counsel for the appellant / revenue.

5. We are of the view that the impugned order does not call for any interference. Both the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal have returned a concurrent and clear finding of fact that the notice under Section 143 (2) was issued on 23.03.2000 and since the return was filed on 27.03.2000, the notice was not a valid one and, therefore, the assessment completed on the basis of the notice was also invalid and was consequently set aside. It is for the first time before us that the learned counsel for the appellant contends that the notice, in fact, was issued on 27.03.2000 and not on 23.03.2000, the date which is recorded on

the notice itself. No such contention was raised before the Lower Appellate Authorities. Consequently, the said contention cannot be raised before us for the first time.

6. However, even if we accept what the learned counsel for the appellant / revenue submits, it does not make the case any better for him. In para 3.4 of the memorandum of appeal, the appellant has stated that the return was filed by the assessee on 27.03.2000 and the notice under Section 143(2) was served upon the Authorized Representative of the assessee by hand when the Authorized Representative of the assessee came and filed return. However, the date of the notice was mistakenly mentioned as 23.03.2000.

7. Assuming the aforesaid to be true, the notice was served on the Authorized Representative simultaneously on his filing the return which clearly indicates that the notice was ready even prior to the filing of the return. Section 143(2) of the said Act clearly indicates that where a return has been furnished under Section 139, or in response to a notice under Section 142(1), the Assessing Officer shall-

> (i) Where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim.
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> (ii) Notwithstanding the aforesaid, if the Assessing Officer considers it necessary or expedient

> to ensure that the assessee has not under-stated the income or has not computed excessive loss or has not under-paid the tax in any manner, he may serve the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support return."

8. The provisions of Section 143(2) make it clear that the notice can only be served after the Assessing Officer has examined the return filed by the assessee. Whereas what para 3.4 indicates is that when the assessee came to file the return, the notice under Section 143(2) was served upon the Authorized Representative by hand. Thus, even if we take the statement of the Assessing Officer at face value, it would amount to gross violation of the scheme of Section 143 (2) of the said Act.

9. In any event, we do not agree with the contentions raised by the learned counsel for the appellant that the notice was issued on 27.03.2000 in as much as the Tribunal has already returned a finding that the notice was issued on 23.03.2000. That being the case, no interference with the impugned order is called for.

No substantial question of law arises for our consideration.

The appeal is dismissed.

BADAR DURREZ AHMED, J

V.K. JAIN, J

APRIL 13, 2010
RB