INCOME TAX

Before Mehar Singh, C.J. and R. S. Narula, J.

THE COMMISSIONER OF INCOME-TAX, PUNJAB, HARYANA, JAMMU & KASHMIR, HIMACHAL PRADESH, AND CHANDIGARH, PATIALA,—*Applicant.*

versus

LALITA KAPUR,—*Respondent.*

Income Tax Reference No. 49 of 1966

March 11, 1970.

Income Tax Act (XI of 1922)—Sections 18-A(1) and (9)(a), 63(1)—General Clauses Act 1897(X of 1897)—Section 27—Registered acknowledgment due notice sent on the address furnished by the assessee—Notice received by agent—No instrument in writing appointing such agent—Contents of notice not communicated to assessee—Such service—Whether proper—Presumption under section 27 of General Clauses Act—Whether rebutted.

Held, that under section 27 of the General Clauses Act, where notice is served by registered post the service must be deemed to be effected if the notice was properly addressed, pre-paid and posted by registered post and the mere fact that the physical delivery of the notice was made to a person other than the addressee and a person who had no authority by an instrument in writing to receive the notice on the addressee's behalf, would not be sufficient to prove that there had been no proper service. It would, however, depend on the circumstances of each case whether this presumption has been rebutted by proof of further facts as for instance where the letter never reaches the addressee or where it is received by a person other than the addressee and its contents are not communicated to the assessee. Thus in such like cases the presumption under section 27 stands rebutted and the service thus effected on the assessee under section 63(1) of Income-tax Act, 1922, will not be a valid service under the Act. (Para 6)

Reference under Section 256(1) of the Income-tax Act, 1961 by the Income-tax Appellate Tribunal (Delhi Bench). The important questions of law involved are as under :—

(1) *Whether on the facts and circumstances of the case the assessee was validly served with an order in writing for payment of advance tax under section 18-A(1) of the Income Tax Act, 1922?*

(2) *If the answer to question No. 1 is in the negative, whether the assessee committed a default liable to be punished under section 18-A(9)(a) assuming that the estimate filed by her was known to be false or she had reason to believe the same to be untrue ?*

D. N. AWASTHI, AND B. S. GUPTA, ADVOCATES, for the apppellants.

MUNESHWAR PURI, ADVOCATE, for the respondent.

JUDGMENT

MEHAR SINGH, C.J.—In this reference the assessment year is 1962-63, with the accounting year ending on March 31, 1962.

(2) The assessment to income-tax for the assessment year 1959-60 in the case of the assessee was completed on or before June 16, 1961, determining her total income at Rs. 12,000. On June 16, 1961, the Income-Tax Officer gave notice under section 18-A(1) of the Income Tax Act, 1922 (Act 11 of 1922), for payment of advance tax at Rs. 12,000, consistent with the total income of the assessee assessed to income-tax for assessment year 1959-60. The notice obviously was for payment of advance tax in relation to the year 1962-63. In the meantime the return filed by the assessee for the assessment year 1960-61 was also finalised and for that assessment year the total income of the assessee was assessed at Rs. 33,300. In the wake of this second assessment for the year 1960-61, the Income Tax Officer issued a revised notice under section 18-A(1) of the Act on August 4, 1961, requiring the assessee to pay advance tax in the wake of the determination of her total income in the assessment year 1960-61. Obviously this revised notice related to advance tax payable in regard to the coming assessment year 1962-63.

(3) The assessee had given to the Income Tax Officer, her address as—"Shrimati Lalita Kapur, through Hindustan Forest Company Ltd., Pathankot," and notices under section 18-A(1) of Act 11 of 1922 were sent to her to that address under registered cover, acknowledgment due. The revised notice was sent to her in that manner on that address. It was received on August 8, 1961, by the Manager of the Hindustan Forest Company Ltd., Mr. Nanda, who made an endorsement upon the acknowledgment receipt, the finding of the Income Tax Appellate Tribunal on this being that he received the registered letter 'for and on behalf of the Hindustan Forest Company Ltd., and not on behalf of the assessee.'

(4) On December 17, 1961, the assessee made a payment of Rs. 13,000 as advance tax on her own estimate of her income, and not basing the same on the notice, as already referred to above, at the figure of Rs. 12,000. In her return of income-tax for the assessment year 1962-63, the assessee disclosed an income of Rs. 32,083, for the purposes of income-tax and that figure was accepted by the Income

Tax Officer under section 143(1) of the Income Tax Act, 1961 (Act 43 of 1961).

(5) On May 1, 1963, the Income Tax Officer proceeded to issue notice under section 274 of Act 43 of 1961 why penalty should not be levied upon the assessee for having furnished under sub-section (2) section 18-A of Act 11 of 1922, estimate of tax payable by her which she had reason to believe to be untrue having regard to sub-section (9) of section 18-A of that Act. The Income-Tax Officer in view of section 297(2) (g) of Act 43 of 1961 overruled an objection on the part of the assessee that penalty could not be imposed under section 273 of Act 43 of 1961. He rejected an argument on the side of the assessee that service through registered cover had not been made on the assessee and held that Mr. Nanda had in the past been receiving similar notices on behalf of the assessee and so delivery of the registered cover was sufficient notice to her of the demand to pay advance tax, as that notice was given on August 4, 1961. He, therefore, by his order of May 1, 1963, copy Annexure 'A', imposed a penalty of Rs. 563 on the assessee for her default in making payment of the advance tax according to the notice served on her under section 18-A(1) of Act 11 of 1922. On appeal by her, the Appellate Assistant Commissioner of Income Tax dismissed that appeal on August 22, 1963. On further appeal the Income Tax Appellate Tribunal reversed the orders of the two Income-Tax authorities below and finding that the notice was not validly served on the assessee, set aside the order imposing penalty upon her, the Tribunal's order in second appeal being of February 18, 1964. On that the Commissioner of Income-Tax, Punjab, Jammu and Kashmir, and Himachal Pradesh, Patiala, has obtained a reference under section 250(1) of Act 43 of 1961 of these questions to this Court from the Tribunal—

"1. Whether on the facts and circumstances of the case the assessee was validly served with an order in writing for payment of advance tax under section 18-A(1) of the Income-Tax Act, 1922 ?

2. If the answer to question No. 1 is in the negative, whether the assessee committed a default liable to be punished under section 18-A(9)(a) assuming that the estimate filed by her was known to be false or she had reason to believe the same to be untrue ?"

The order of reference by the Tribunal is of August 2, 1966.

(6) In section 63(1) of Act 11 of 1922, it is provided that "Notice or requisition under this Act may be served on the person therein named either by post or, as if it were a summons issued by a Court, under the Code of Civil Procedure, 1908 (V of 1908)". The Tribunal was of the opinion that under Order 5, rules 9 and 12, and Order 3, rules 2, 3 and 6 of the Code of Civil Procedure, service of summons on an agent of a party is only valid when the appointment of the agent has been made by an instrument in writing and that verbal authority is not enough. In the present case no instrument in writing appointed Mr. Nanda as the agent of the assessee to accept or receive service for or on her behalf. Under sub-section (1) of section 63 of Act 11 of 1922 when service in the alternative is made by post an assessee of a notice or requisition, the Tribunal was of the opinion that if such service is to be made or an agent of an assessee, it must be in substance in the same manner as in Order 5, rules 9 and 12, and Order 3, rules 2, 3 and 6 of the Code of Civil Procedure, in other words, an agent without having been appointed by an instrument in writing by the assessee to accept service, can not accept service even by post. The Tribunal proceeded to decide in this manner on the facts—"We held that as Shri P. C. Nanda was not an authorised agent of the assessee for acceptance of service, it was not a valid service even if it were assumed for the sake of argument that he was habitually receiving notices on her behalf. We also held that Shri Nanda did not deliver the notice or communicate the contents thereof to the assessee." So the conclusion of the Tribunal was that the assessee had had no notice under section 18-A(1) of Act 11 of 1922. It is urged by the learned counsel for the Commissioner of Income-Tax that what the Tribunal has not considered is section 27 of the General Clauses Act, 1897 (Act 10 of 1897), which reads—"Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post; whether the expression 'serve' or either of the expressions 'give' or 'send' or any other expression is used then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved; to have been effected at the time at which the letter would be delivered in the ordinary course of post." The learned counsel urges that soon as in the wake of the provisions of section 63 of Act 11 of 1922 and her own address given by the

assessee herself to the Income Tax authorities a letter containing the notice to her under section 18-A(1) of that Act, properly addressed and pre-paid, was sent by registered post to her, the service shall be deemed to be effected upon her and so in this case the service was duly effected on her the day the registered letter was delivered on the address given by her at the office of the Hindustan Forest Company Ltd., Pathankot. The learned counsel relies upon *Commissioner of Income Tax, West Bengal* v. *Malchand Surana* (1), in which the learned Judges of the Calcutta High Court held that under section 27 of Act 10 of 1897, where a notice under the Income-Tax Act is served by registered post the service must be deemed to be affected if the notice was properly addressed, prepaid and posted by registered post, and the mere fact that the physical delivery of the notice was made to a person other than the addressee and a person, who had no authority to receive the letter on the addressee's behalf, would not be sufficient to prove that there had been no proper srvice; the learned Judges further holding that it would depend on the circumstances of each case whether this presumption has been rebutted by proof of further acts, and the onus of proving such further facts is on the assessee. The learned Judges were in this approach following *Harihar Banerji* v. *Ramshashi Roy* (2), which case has also been followed in *Bharat Glass Factory* v. *Sales Tax Officer, II Allahabad* (3). In the present case, in the terms of section 63(1) of Act 11 of 1922, notice under section 18-A(1) of that Act was sent by post under registered cover properly addressed and pre-paid to the address given by the assessee herself. So the conditions of section 27 of Act 10 of 1897 were fulfilled and service upon her of the notice must be deemed to have taken place on the date the letter was delivered at that address. So far the cases relied upon by the learned counsel for the Commissioner of Income Tax support his position. The reply, however, of the learned counsel for the assessee is that the presumption that arises under section 27 of Act 10 of 1897 is a rebuttable presumption and that in *Malchand Surana's case* (1), the learned Judges held as much. He refers to this observation of the learned Judges at page 694 of the report, after the learned Judges had made reference to *Harihar Banerji's case* (2),—"The illustration

(1) (1955) 28 I.T.R. 684.
(2) A.I.R. 1918 P.C. 102.
(3) (1968) 21 S.T.C. 445.

given by their Lordships, of the master and the servant, presupposes that the delivery was in fact made to the master, although the acknowledgment receipt was signed by a different person. But there might be a case when the letter never reached the addressee. In such a case, there would be room left for rebuttal of the presumption by further facts proved by the addressee who sought to avoid the effect of the service and it would depend upon the circumstances of each case, whether or not the presumption had been thus rebutted by the proof of further facts", and, again at page 695,—"The contention of the assessee which the Tribunal have accepted is that the brother never communicated to him the information contained in the notice. What that actually means or could possibly mean, no one was able to explain. Did it mean that the brother had opened the cover and read the notice and while telling the assessee that a notice from the Income-tax department had been received, did not tell him what the contents of the notice were ? If such was the fact, it would be a matter for enquiry under section 27 of the Act whether the assessee, on being informed of the service of a notice from the Income-tax department, was not required to take possession of the notice or to inform himself of its contents or make some attempt in that behalf before he could plead sufficient cause for not complying with the notice. Regarded as a question under section 27 of the General Clauses Act, the Tribunal would have to find what the facts were, namely, whether the assessee had come to know of the service of the notice at all or whether, having come to know that some notice had been served, he had not made any further enquiry and had not been informed of what the notice contained and whether the presumption raised by the section had been rebutted according as the facts found proved the affirmative or the negative." In that case the learned Judges in the end left it to the Tribunal to decide whether presumption under section 27 of Act 10 of 1897 had or had not been rebutted. This is exactly the position that is now taken by the learned counsel for the Commissioner of Income-Tax, that in this matter as in *Malchand Surana's case* (1), the question whether the presumption under section 27 of Act 10 of 1897 has or has not been rebutted, should be left to be decided by the Tribunal, the presumption having arisen of the service having been effected upon the assessee by registered cover in the circumstances as explained above and within the meaning and scope of section 27 of that Act. In *Malchand Sirana's case* (1), the Tribunal had not given any findings on facts. In this case the Tribunal has said expressly in its appellate order of February 18, 1964, as also

in the reference order that Mr. Nanda of the Hindustan Forest Company Ltd., Pathankot, did not deliver the notice or communicate its contents to the assessee. So the registered letter that was received by Mr. Nanda was neither delivered nor communicated to the assessee by him. The learned counsel for the Commissioner of Income-Tax in this respect takes the stand that it might still be possible for the Commissioner of Income Tax to show that somewhere at the premises of the Hindustan Forest Company Ltd., Pathankot, the letter was lying and was readily accessible to the assessee, so that in spite of the above findings of fact by the Tribunal the assessee still may fail to discharge the burden on her to rebut the presumption as raised by service on her by registered post in terms of section 27 of Act 10 of 1897. But no such thing was ever said or alleged on the side of the Commissioner of Income-Tax before any of the Authorities below. The learned counsel for the assessee points out that it is for the first time that this matter has been raised on the side of the Commissioner of Income-Tax, and, though the Tribunal has not dealt with this matter, the learned counsel for the Commissioner of Income-Tax urges that an argument with reference to section 27 of Act 10 of 1897 was addressed to the Tribunal. So unlike *Malchand Surana's case* (1), in the present case the Tribunal has given findings of fact in clearest words that the registered letter, containing notice under section 18-A(1) of Act 11 of 1922 received by Mr. Nanda of the Hindustan Forest Company Ltd., Pathankot, though properly addressed to the assessee, was never delivered by him to her, nor communicated to her. These findings of fact rebut the presumption upon which the learned counsel for the Commissioner of Income-Tax relies under section 27 of Act 10 of 1897. The learned counsel for the Commissioner of Income-Tax presses that in the order of reference the learned Tribunal has not made mention of section 27 of that Act, and the answer to the first question must be confined strictly to the terms of the reference itself, but in view of the decision of a Full Bench of this Court in *Seth Balkishan Das* v. *Commissioner of Income-Tax, Patiala* (4), where a clear finding of fact has been given, as in this case, it is open to this Court to answer the question having regard to the scope of the same. In the present case the first question is wide enough to cover the considerations as above under section 27 of Act 10 of 1897 taken with the findings of fact as given by the Tribunal. The answer to the first question is, therefore, in the negative.

(4) (1966) 61 I.T.R. 194.

(7) In regard to the penalty under section 18-A(9) (a) of Act 11 of 1922, on the assessee in this case, if she had been required to furnish the estimate of her income according to sub-section (2) of section 18-A of that Act, then only obviously the provisions of subsection (9) would be attracted. It is expressly stated in sub-section (2) of that section that the assessee who is required to pay tax by an order under sub-section (1), of that section is to give the estimate of his income, and obviously 'required' means "required by a due notice'. The answer to the first question being in the negative and no notice under sub-section (1) of section 18-A of that Act having been given to the assessee, she was not required to pay tax on an estimate as referred to in sub-section (2) of that section and hence the penalty provision of sub-section (9) of tha section was not attracted. The answer to the second question is also in the negative.

(8) The two questions in the reference having been answered in the negative, the Commissioner of Income-Tax will bear costs of the assessee, counsel's fee being Rs. 250.

R. S. NARULA, J.—I agree.

N. K. S.

CIVIL MISCELLANEOUS

Before Prem Chand Jain, J.

RANDHIR SINGH AND OTHERS,—*Petitioners.*

Versus.

FINANCIAL COMMISSIONER, HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 2612 of 1968

March 27, 1970.

Pepsu Tenancy and Agricultural Lands Act (XIII of 1955 as amended by IX of 1956)—Sections 7 and 8—Tenant inducted on land after the commencement of Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956—Whether can be ejected straightaway after expiry of three years—Proof of conditions under section 7—Whether necessary.

Held, that a tenant inducted on land after the commencement of the Pepsu Tenancy and Agricultural Lands (Second Amendment) Act, 1956,