

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO(S). 2262 OF 2018  
[ARISING OUT OF SPECIAL LEAVE PETITION  
(CIVIL) NO.9174 OF 2015**

**INCOME TAX OFFICER, ETAWAH ...APPELLANT(S)**

**VERSUS**

**DHARAM NARAIN ...RESPONDENT(S)**

**ORDER**

1. Leave granted.
2. By the impugned order, the High Court has quashed the notice dated 16<sup>th</sup> October, 2006 issued under Section 143(2) of the Indian Tax Act, 1961 to the respondent - Assessee by allowing the writ petition filed by the said Assessee. Aggrieved, the Revenue is in appeal before this Court.
3. Admittedly, under the provisions of Section 143(2) of the Income Tax Act, 1961 (as then in force) the notice has to be

served on the respondent - Assessee latest by 30<sup>th</sup> October, 2006. In the present case, notice was issued on 16<sup>th</sup> October, 2006 which was dispatched on 18<sup>th</sup> October, 2006 by registered post. The materials on record indicate that on two occasions the notice sent by registered post could not be served on the respondent - Assessee as he was not available and that it was served on the authorized representative of the respondent - Assessee on 19<sup>th</sup> October, 2006. The question, therefore, that arises in the writ petition was whether in such circumstances the requirement under Section 143(2) of the Income Tax Act, 1961 was met by the Revenue. The High Court answered the question in the negative taking the view that what is required to be satisfied by the Revenue is service of notice and not mere issuance thereof.

4. It will not be necessary for us to decide the aforesaid question in the present case which is being kept open for decision in an appropriate case. We have taken the aforesaid view as the present case is capable of being resolved on its own peculiar facts.

5. The non-availability of the respondent - Assessee to receive the notice sent by registered post as many as on two occasions and service of notice on 19<sup>th</sup> October, 2006 on the authorized representative of the respondent Assessee whom the respondent Assessee now disowns, in our considered view, is sufficient to draw an inference of deemed service of notice on the respondent - Assessee and sufficient compliance of the requirement of Section 143(2) of the Income Tax Act, 1961.

6. On the aforesaid view that we have taken we are of the opinion that the High Court was not right in coming to the impugned conclusion in the facts of the instant matter. We, accordingly, allow this appeal and set aside the order of the High Court.

....., J.  
(RANJAN GOGOI)

....., J.  
(R. BANUMATHI)

NEW DELHI  
FEBRUARY 19, 2018

ITEM NO.46

COURT NO.3

SECTION IV-B

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

PETITION(S) FOR SPECIAL LEAVE TO APPEAL (C) NO(S). 9174/2015  
(ARISING OUT OF IMPUGNED FINAL JUDGMENT AND ORDER DATED 05-12-2012  
IN WP NO. 642/2007 PASSED BY THE HIGH COURT OF JUDICATURE AT  
ALLAHABAD)

INCOME TAX OFFICER, ETAWAH

PETITIONER(S)

VERSUS

DHARAM NARAIN

RESPONDENT(S)

(AND IA NO.18177/2018-EXEMPTION FROM FILING O.T. AND IA  
NO.24513/2018-I/A FOR FILING CORRECTED VERSION OF THE COUNTER AFF.  
AND IA NO.24758/2018-I/A FOR FILING CORRECTED VERSION OF THE  
COUNTER AFF. AND IA NO.24761/2018-EXEMPTION FROM FILING O.T.)

Date : 19-02-2018 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MRS. JUSTICE R. BANUMATHI

For Petitioner(s)

Mr. K. Radhakrishnan, Sr. Adv.  
Ms. Rekha Pandey, Adv.  
Mr. Sarad Kumar Singhania, Adv.  
Ms. Gargi Khanna, Adv.  
Mrs. Anil Katiyar, AOR

For Respondent(s)

Mr. Imtiaz Ahmed, Adv.  
Mrs. Naghma Imtiaz, Adv.  
Mr. Ahmed Zargham, Adv.  
Ms. Amra Moosavi, Adv.  
for M/S. Equity Lex Associates, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order. Consequently, all pending applications are also disposed of.

[VINOD LAKHINA]

AR-cum-PS

[ASHA SONI]

BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]

**Court No. - 21**

**Case :-** WRIT TAX No. - 642 of 2007

**Petitioner :-** Dharam Narain

**Respondent :-** Income Tax Officer, Etawah

**Petitioner Counsel :-** Shakeel Ahmad

**Respondent Counsel :-** S.C.,A.N.Mahajan,B.Agrawal,Dhananjai Awashthi

**Hon'ble R.K. Agrawal,J.**

**Hon'ble Ram Surat Ram (Maurya),J.**

By means of this petition, the petitioner seeks a writ order or direction in the nature of certiorari quashing the notice dated 16.10.2006 issued under section 143(2) of the Income Tax Act (hereinafter referred to as "the Act) filed as Annexure-2 to the writ petition and also a writ of mandamus restraining the respondent from proceeding further in pursuance of the notice dated 16.10.2006.

Briefly stated by the petitioner in the writ petition are as follows:

The petitioner is the Proprietor of M/s Narain Filling Station, situate at Bakothi, district Kanpur. He resides at village Gautampur, Post Ujhiyani, Tahsil Chakarnagar, district Etawah. He is regularly assessed the tax in Permanent Account No.AAGPN4939M for the assessment year 2005-2006. He filed his return of income as individual on 17.10.2005. The return was filed accompanied with duly audited account under section 44AB of the Act. The Income Tax Officer, Etawah ,the respondent herein issued a notice u/s 143(2) of the Act for the assessment year 2005-2006 which was issued on 16.10.2006 with the date fixed in the notice was 17.10.005. The notice was served upon the petitioner on 2.11.2006. It was dispatched on 18.10.2006.

The present writ petition has been filed on the ground that the notice issued u/s 143(2) of the Act is barred by limitation as provided by the Proviso to Section 143(2)(ii) of the Act and therefore, the entire proceedings are liable to be quashed. In the counter affidavit filed by Sri Ajai Kumar Dubey, Senior Tax Assistant in the office of the Income Tax, Etawah, in para 5 and 6 of the said affidavit it has been stated that the notice dated 16.10.2006 was dispatched on 18.10.2006 under registered Cover. The postal Department could not serve the notice on 19.10.2006 as the petitioner was not available at the address as mentioned in his return of income. Thereafter the Postal Department approached the petitioner again after three days whereby they were informed that the petitioner had not returned back. It was served on 2.11.2006. A plea has also been taken in paragraph 2(iv) of the affidavit that the notice dated 16.10.2006 was also served on Safdar Husain Advocate who is authorized representative of the petitioner on 19.10.2006 and therefore, the notice has been served within the prescribed period.

In the Rejoinder Affidavit filed by the petitioner it has been denied that Sri Safdar Husain Advocate was the authorized representative duly authorized by the petitioner to receive the notice.

Heard Sri Shakeel Ahmad, learned counsel for the petitioner and Sri

Dhananjai Awasthi appearing for the respondent.

Learned counsel for the petitioner submitted that in view of the specific provision as the notice was not served within 12 months from the end of the month in which return was furnished, the return having been filed on 17.10.2005 i.e. after the expiry of the period of 12 months from the end of October 2005, the notice u/s 143(2) was clearly barred by limitation and therefore, the entire proceedings is barred by limitation as held by Hon'ble Supreme Court in case of **CIT Vs. Sahara India Savings and Investment Corporation Ltd.(2010) 321 ITR 371(SC)**

Sri Awasthi, learned counsel for the respondent submitted that the notice was issued on 16.10.2006 i.e. within the period of 12 months from the end of the month i.e. October 2005 when the return was filed and if for any reason the petitioner could not be served, no adverse view should be taken. He further submitted that in any view of the matter the notice was served upon Sri Safdar Husain Advocate on 19.10.2006 who was the authorized representative of the petitioner and therefore, the proceedings are within the limitation.

In rejoinder, learned counsel for the petitioner submitted that notice could not be served upon the authorized representative and it cannot be deemed to be a valid service of notice.

We have given our thoughtful consideration to the various pleas raised by the learned counsel for the parties. We find that admittedly the notice for the assessment year 2005-2006 was issued on 16.10.2006 u/s 143(2) of the Act. Though it was issued on 16.10.2006 it was served upon the petitioner on 2.11.2006. The proviso to Section 143(2)(ii) of the Act specifically provides that no notice shall be served on the assessee after the expiry of 12 months from the end of the month in which return has been furnished. The Parliament by en-acting the aforesaid proviso specifically, intended that the notice had to be served within a specified period and mere issue of a notice would not be sufficient. The notice had to be served upon the assessee within the period of 12 months from the end of the month on the day return has been filed.

In the present case service on the authorized representative on 19.10.2006 cannot be treated to be a valid service in the eyes of law. The service has to be upon the assessee which in the present case was served on 2.11.2006. The principle laid down by Hon'ble Supreme Court in case of Assistant Commissioner of Income Tax and another Vs. Hotel Blue Moon;(2010) 3 SCC 259 would be fully applicable to the facts of the present case. Therefore, the notice dated 16.10.2006 filed as Annexure-2 to the writ petition which has been served on the petitioner on 2.11.2006 was clearly barred by limitation. The entire proceedings is, therefore, quashed.

The writ petition succeeds and is allowed.

**Order Date :- 5.12.2012**

Hsc/