

Notice served on authorised representative of taxpayer, deemed to be a valid service of notice

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In brief

In a recent decision,¹ the Supreme Court (SC) has held that service of notice under section 143(2) of the Income-tax Act, 1961 (the Act) on the authorised representative (later disowned by the taxpayer) would be deemed as service of notice on the taxpayer.

In detail

Facts

- The taxpayer was a proprietor and filed his tax return for assessment year 2006-07 on 17 October 2005.
- A notice under section 143(2) dated 16 October, 2006 (the notice) was dispatched by Revenue on 18 October, 2006 through a registered post.
- The notice was sent by registered post but could not be served on the taxpayer on two occasions.
- The notice was served on the authorised representative (AR) of the taxpayer on 19 October 2006.
- The notice was later served on the taxpayer on 2 November, 2006.
- Taxpayer filed a writ petition before the High Court of Allahabad (HC) on

the ground that the notice was barred by limitation, and therefore, the entire proceedings was liable to be quashed.

- In the rejoinder affidavit, the taxpayer denied that the AR was duly authorised by the taxpayer to receive the notice.
- The HC held that service of notice on the AR of the taxpayer could not be treated as service of notice on the taxpayer.
- The HC allowed the writ of the taxpayer on the ground that the condition of service of notice on the taxpayer within the due date was not satisfied.

Issue before the Supreme Court

Whether the service of notice on the AR of the taxpayer (whom the taxpayer later disowned) was sufficient compliance of requirements of section 143(2) of the Act?

Revenue's contentions

- The notice was served on the AR of the taxpayer within the due date specified in the Act.
- On two occasions the notice was attempted to be served on the taxpayer by the postal authorities and due to non-availability of the taxpayer, the registered post could not be served on the taxpayer within the due date.
- The notice was valid and had to be considered as served within the due date prescribed under the law.

Taxpayer's contention

Service of notice to the AR who was not duly authorised to receive notice was not a valid service of notice.

Supreme Court's decision

- The Supreme Court (SC) observed that the facts of the case was peculiar and hence decided to rule on

¹ Civil Appeal No(s). 2262 of 2018

the facts of the case rather than on the merits of the issue.

- SC observed that the taxpayer was not available on two occasions to receive the notice through postal authorities.
- Service of notice on the AR of the taxpayer (*whom the taxpayer now disowns*), was sufficient to draw an inference of deemed service of notice on

the taxpayer.

- Hence, SC ruled that the Revenue had complied with the requirements of section 143(2) of the Act.

The takeaways

- Merely alleging that the notice was not served on the taxpayer on the ground that the taxpayer was not available at his address would no longer

hold good.

- If a notice is served on the AR of the taxpayer, the same would be treated as deemed service of notice to the taxpayer.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor

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