

Commissioner of Income Tax Punjab

Vs

Daulat Ram Khanna

(J. C. Shah, S. M. Sikri, V. Ramaswami - I JJ)

29.03. 1967

JUDGMENT

SIKRI J. –

This appeal by special leave is directed against the judgment of the High Court of Punjab Chandigarh in Income Tax Reference No. 23 of 1962 made to it by the Income Tax Tribunal under s. 66(1) of the Indian Income Tax Act 1922. The following question was referred to the High Court :-

"Whether on the facts and the circumstances of the case the notice under section 34 of the Income Tax Act was properly served on the assessee within the prescribed period."

The relevant facts, in brief are that the respondent Shri. Daulat Ram Khanna hereinafter referred to as the assessee is a Hindu undivided family and the dispute relates to the year of assessment 1945-46. Proceedings under s. 34 of the Income Tax Act were started by the Income Tax Officer 'B' Ward Amritsar against the assessee by issue of a notice on March 29, 1954. The Process Server went to the assessee's shop for service of the notice on the assessee on March 30, 1954 but he could not serve it on the assessee because the Karta the assessee was not present. The Process Server reported to the Income Tax Officer on the same day that the assessee had refused to accept the service of the notice on the receipt of the said report the Income Tax Officer on the same day i.e. March 30, 1954 sent the notice by registered post and also ordered substituted service of the notice by directing the Process Server to affix the same at the address of the assessee. The notice was affixed on March 31st, 1954. We need not give the facts regarding the service of the notice by registered post because it was received by the assessee on April 5, 1954. In view of the fact that the notice was affixed according to the direction of the Income Tax Office and after recording the statement of the process server held that the service of the notice by affixture was proper.

The assessee appealed. The Appellate Assistant Commissioner inter alia held that as a copy of the notice was not pasted on the outer wall of the office room of the Income Tax Office, the substituted service was invalid.

Further on appeal the Appellate Tribunal held that the notice was properly served under Order V. r. 20(1) of the Code of Civil Procedure and as the Income Tax Officer was not a Court, it was not incumbent on him to affix a copy of the notice on the notice board of the Income Tax Office. The Tribunal therefore held that the notice was properly served and set aside the order of the Appellate Assistant Commissioner.

The High Court following its earlier decision in *Jhabar Mal Chokani v. Commissioner of Income*

Tax held that the substituted service was invalid and answered the question in the negative. It also refused to allow the counsel for the Revenue to raise the point that the notice under s. 34 had been served in time even if the service be taken to have been effected after March 31, 1954. He had relied before the High Court on the Indian Income Tax (Amendment) Act, 1959 and the decision of this Court in *S. C. Prasher v. Vasantson Dwarkadas*.

The learned counsel for the Revenue, Mr. B. Sen urges first that in view of *Commissioner of Income Tax v. Straw Products Ltd.* the High Court erred in not allowing the second point to be raised and secondly he contends that the earlier case of the High Court in *Jhabar Mal Chokhani v. Commissioner of Income Tax* was wrongly decided. As we agree with the latter contention it is not necessary to deal with the first point raised by him.

Under s. 63 of the Income Tax Act a notice may be served as if it were the summons issued by the court under the Code of Civil Procedure. The answer to the question depends on the true interpretation of O. V. r. 20(1) of the Civil Procedure Code which reads as follows :-

"1) Where the Court is satisfied that there is reason to believe that the defendant is keeping out of the way for the purpose of avoiding service or that for any other reason the summons cannot be served by affixing a copy thereof in some conspicuous place in the court house and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain, or in such other manner as the Court thinks fit".

Mr. Sen divides the above sub-rule into two parts. According to him the first part deals with a copy of the summons being affixed in the court house and another copy being affixed in some conspicuous part of the residential house or business premises. He says that it is not obligatory on the Court to adopt this method but the Court can in view of the circumstances order the service of the notice in any other manner as it thinks fit. Mr. sen further says that it would be noticed that the word "also" has not been repeated in the last ten words of the sub-rule underlined above. He says that in a particular case it is in the discretion of the Court to order service of the notice by registered post or by affixing a copy thereof and then satisfying itself that the copy has been affixed in a proper manner.

In our view, there is great deal of force in what Mr. sen urges. It seems to us that the last ten words in sub-rule(1) of r. 20 do confer a discretion on the Court to adopt any other manner of service. The sub-rule prescribes one manner which the Court may follow and this manner consists of two acts : (1) affixing a copy of the summons in the court house and (2) affixing it in some conspicuous part of the residential house or the business premises of the defendant. If the High Court were right we would expect that the word "also" would be repeated and inserted between the word "or" and "in" in the last ten words. The alternative manner which the Court decides to adopt for serving must of course be such as gives notice to the person to be served.

The High Court in *Jhabar Mal Chokhani v. Commissioner of Income Tax* had relied on *Deccan Co-operative Bank Ltd. v. Parsram Tolaram* but that case considered O. 21 r. 46 sub r(2) and in our view the High Court wrongly regarded that provision being in pari materia with O. V. r. 20(1) because in r. 46(2) the last ten words in O. V. r. 20(1) which we have underlined do not figure. The decision of the Patna High Court in *Narendra Prasad Sinha v. Maharani Janki Kuer* is also distinguishable as it also deals with O. 21 r. 46(2).

It seems to us that the object of the Legislature in giving a discretion to the court is to enable the Court to see that unnecessary steps are not taken and the service is effected in the most expeditious and best manner. For example If the person to be served had to knowledge or the Court temporarily gone outside India the Court might have sent even before the insertion of r. 20A the summons by registered post to his address aboard without affixing a copy thereof in the court-house. In Narendra Kishore Das v. Banamali Sahu Dibakar Sadhu Firm the Division Bench of the Orissa High Court held that "the last mode of service namely 'or' in such other manner as the Court think fit, no doubt gives the Court the jurisdiction to have the service of summons through the registered post."

In our opinion, the case of Jhabar Mal Chokhani Commissioner of Income Tax was wrongly decided. In the result we accept the appeal set aside the judgment of the High Court and answer the question in the affirmative and again the assessee. In the circumstances of the case there will be no order as to costs.

V. P. S. Appeal allowed.

</html