

PUNJAB AND HARYANA HIGH COURT

Kundan Lal Vedi

Vs

Commissioner of Income-Tax

(Falshaw, J.)

06.05.1958

JUDGMENT

Falshaw, J.

1. This is a petition under section 66(2) of the Indian Income-tax Act filed by Kundan Lal Vedi as representing his late father Rai Bahadur Dr. Hari Ram, in the following circumstances. On the 27th of March, 1951, the Income-tax officer, Contractors Circle, New Delhi, issued a notice under a section 34 of the Income-tax Act to the assessee by which he proposed to re-open the assessment for the year 1942-43 on the ground that he had reason to believe that on account of omission or failure on the part of the assessee to disclose full and true facts necessary for assessment for the year in question income-tax had been under-assessed. In the absence of the assessee or any one on his behalf the assessment was completed by the Income-tax Officer under section 23(4) on 22nd June, 1951. In the following month the assessee filed an application before the Income-tax Officer under section 27 of the Act praying for cancellation of the assessment order under the provisions of section 23(4) on the ground that he was not served with any notice under section 34 read with section 22(2) and that he was not given a reasonable opportunity to comply with it. The application was dismissed by the Income-tax Officer on the ground that the assessee had been properly served with a notice, and this finding was upheld in turn by the Appellate Assistant Commissioner and the Income-tax Appellate Tribunal. The assessee then applied to the Tribunal under section 66(1) of the Act for the case to be started to this court on the question whether the assessee had been properly served with a notice. This application was also rejected. The facts regarding service of the assessee as found, which we must accept as correct are as follows : There is no doubt that during the period in question the assessee was partly paralysed as the result of a stroke, and on the 30th March, 1951, the notice was brought to him persona by an officer of the Income-tax Department and on the ground that he was unable to hold a pen for the purpose of signing the acknowledgement of the receipt of the notice, the notice was actually received by his accountant, Suram Chand, under his direction. As a matter of extra caution however another effort was made to get the assessee personally to accept a notice and an Inspector of the Income-tax Department was sent to the house again on the 31st of March, when

he actually saw the assessee who, however, did not accept the notice and drove away in his car. On behalf of the petitioner reliance was placed on the provisions of section 63(1) of the Act according to which any notice under the Act may be served either by post or as if it were a summons issued by a court under the Code of Civil Procedure, and it is contended that the acceptance of the notice by Suram Chand, the accountant, on the 30th of March, was not a valid service, in spite of the fact that there was evidence that Suram Chand had previously accepted notices on behalf of the assessee, on the ground that he was not his agent authorised in writing for this purposes and a regards the 31st Of March, it is contended that if the conduct of the assessee amounted to a refusal of service the provisions of the Civil Procedure Code required that a copy of the notice be affixed on the door of his house. There cannot in fact be any doubt that the notice sent by the Income-tax Officer was received on behalf of the assessee and the only question is whether the service was invalid on account of any technical flaw. In my opinion the attempt to serve the assessee on the second occasion on the 31st of March was unnecessary, since he had been properly served on the previous day when the notice was presented in his presence and at his own instance it was placed in the hands of his accountant and acknowledged by him. This, in my opinion, amounted in the circumstances to personal service. I therefore, see no reason to require the Tribunal to state the case to this court and would dismiss the petition with costs, counsels fee Rs. 150.

Bhandari, C.J.

I agree Petition dismissed.