COMMISSIONER OF INCOME-TAX, PUNJAB

v.

DAULAT RAM KHANNA

March 29, 1967

[J. C. SHAH, S. M. SIKRI AND V. RAMASWAMI, JJ.]

Income Tax Act (11 *of* 1922) *s.* 63—*Notice under s.* 34—*Direction by Income-tax Officer to affix at address of assessee—No affixture on the notice board of the Income-tax Office—Sufficiency of substituted service.*

Code of Civil Procedure (*Act* 5 *of* 1908), *O. V. r.* 20(1)—*Scope of.*

Under s. 63 of the Income-tax Act a notice under the Act may be served as if it were a summons under the Civil Procedure Code. Order V, r. 20(1) of the Code prescribes two alternative methods of service when the summons could not be served in the ordinary way, namely, (1) by affixing one copy of the summons in the court-house and another in a conspicuous part of the residential house or business premises of the party to be served; and (2) "in such other manner as the Court thinks fit". These words confer a discretion on the court to adopt any other manner of service and include a direction to affix a copy in such manner as to give notice to the person to be served, but without affixing a copy thereof in the court-house. [301A-B]

Therefore, where proceedings under s. 34 of the Income-tax Act, 1922, were started against the assessee, a Hindu Undivided family, by issuing a notice, but the notice could not be served on its *karta*, and the Income-tax Officer ordered substituted service by directing the process server to affix the notice only at the address of the assessee and satisfied himself that the notice was affixed in a proper manner, it must be held that the notice was properly served on the assessee. [299C-E; 301F]

Jhabar Mal Chokhani v. *Commissioner of Income-tax* 49 I.T.R. 391, overruled.

Narendra Kishore Das v. *Banamali Sahu Dibakar Sahu Firm*, A.I.R. 1951 Orissa 312, approved.

Deccan Cooperative Bank Ltd. v. *Parsram Tolaram*, A.I.R. 1942 Sind 96 and *Narendra Prasad Sinha* v. *Maharani Janki Kuer*, A.I.R. 1947 Pat. 385, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 580 of 1966.

Appeal by special leave from the judgment and order dated September 3, 1964 of the Punjab High Court in Income-tax Reference No. 23 of 1962.

B. Sen, T. A. Ramachandran and *S. P. Nayyar* for *R. N. Sachthey*, for the appellant.

S. K. Aiyar and *B. P. Maheshwari*, for the respondent.

The Judgment of the Court was delivered by

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

A 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."

B

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, C 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* of 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. D On receipt of the said report, the Income Tax Officer, on the same day, *i.e.*, March 30, 1954, sent the notice per 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 31, 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 E fact that the notice was affixed according to the directions of the Income-Tax Officer, he, 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, F *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, G 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 Chokhani* v. *Commissioner of Income-Tax*(1) H 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

(1) 49 I. T. R. 391.

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.*(1)

The learned counsel for the Revenue, Mr. B. Sen, urges, first, that in view of *Commissioner of Income Tax* v. *Straw Products Ltd.*(2) 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*(3) 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 in the ordinary way, the Court shall order the summons to 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.

(1) [1964] 1 S. C. R. 29 : 49 I.T.R. 1. (2) [1965] 2 S. C. R. 881.
(3) 49 I.T.R. 391.

A 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 B 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.

C The High Court in *Jhabar Mal Chokhani* v. *Commissioner of Income Tax*(1) had relied on *Deccan Co-operative Bank Ltd.* v. *Parsram Tolaram*(2) 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 under- D lined do not figure. The decision of the Patna High Court in *Narendra Prasad Sinha* v. *Maharani Janki Kuer*(3) 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 E expeditious and best manner. For example, if the person to be served had, to the knowledge of 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 abroad without affixing a copy thereof in the court-house. In *Narendra Kishore Das* v. *Banamali Sahu Dibakar Sahu Firm*(4) the Division Bench F of the Orissa High Court held that "the last mode of service, namely 'or in such other manner as the Court thinks fit', no doubt, gives the Court the jurisdiction to have the service of summons through registered post."

In our opinion, the case of *Jhabar Mal Chokhani* v. *Commissioner of Income Tax*(1) was wrongly decided. In the result we G accept the appeal, set aside the judgment of the High Court and answer the question in the affirmative and against the assessee. In the circumstances of the case there will be no order as to costs.

V.P.S.

Appeal allowed.

H (1) 49 I. T. R. 391.
(2) A. I. R. 1942, Sind, 96.
(3) A. I. R. 1947, Pat. 385.
(4) A. I. R. 1951, Orissa, 312.