

In Re: L.C. Desouza

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Court : Allahabad

Decided On : Feb-12-1932

Reported in : 138Ind.Cas.70

Judge : Mokerji and ;Bennet, JJ.

Appellant : In Re: L.C. Desouza

Judgement :

1. This is a reference under Section 66(2) of the Income Tax Act by the learned Commissioner of Income-tax under the following circumstances.

2. The assessee Mr. L. C. DeSouza is a resident of Cawnpore. On 29th May, 1930, the Income Tax Officer of Gawnpore, issued, by means of registered post, acknowledgment due a notice under Section 22(2) requiring him to submit by July 2 or within 30 days of the service of the notice, a return of the income for the assessment year 1930-1931 This notice was not complied with, although it was delivered by the postal peon to the assessee's son, Mr. J. DeSouza. There was another notice issued under Section 22, Clause (4) of the Income Tax Act, and it was served on another son of Mr. DeSouza. At one time there was a controversy about the validity of this notice, but the Assistant Commissioner of Income Tax having held that this service was not good we are not called upon to express any opinion on that point.

3. As no compliance had been made of the notices issued, an assessment was made on Mr. L.C. DeSouza under Section 23, Sub-section (4) of the Indian Income Tax Act.

4. Mr. DeSouza when a notice of demand was served on him made an application under Section 27 of the Income Tax Act to have the assessment revised. He had to show sufficient cause for non-compliance with the notice and one of the points that were raised was that the service of notice issued on 29th May, 1930, was not a proper service. Certain statements of facts were made by him but those facts were not accepted by the Assistant Commissioner of Income Tax and we are not concerned with those facts.

5. The Commissioner of Income Tax has stated the following question for our answer:

In the circumstances of this case, did the fact that the postal acknowledgment receipt was signed by the assessee's son who was a minor, and signed without stating the name of the addressee for whom he purported to sign, vitiate the service of the notice under Section 22 (2) which was issued by registered post?

6. There are two contentions before us. On behalf of the assessee it is argued that the rule as to service by post in Section 63 of the Income Tax Act has to be read along with Section 27 of the General Clauses Act, and in view of the language employed in Section 27 there is a reputable presumption as to the service effected through post. On behalf of the Crown it is argued that Section 27 of the General Clauses Act has two portions. One related to the service being effected and the other relates to the time at which service is effected, and it is further argued that in respect of the service the presumption is conclusive when the notice has been posted, properly addressed and prepaid and in a registered cover.

7. We have considered the two arguments and are of opinion that the presumption raised by Section 27 is a reputable one. This appears from the language employed by Section 27 itself, and even if the language did not warrant any such conclusion analogy of Section 4 of the Indian Evidence Act would read to the same conclusion.

8. To consider Section 27 first we find the words 'unless the contrary is proved' used. Those words refer both to the service and to the time. It is true that those words come just before the words 'to have been effected at the time', but the whole import of the section seems to be that the presumption holds good unless the contrary is proved. There is no reason to suppose that the first portion of the section containing the words 'service shall be deemed to be effected' is to be taken as a completed sentence before we read the words to have been effected at the time etc.

9. Assuming that the words 'unless the contrary is proved' as used in Section 27 do not apply to the words 'shall be deemed to be effected', we may apply by analogy Section 4, para. 2 of the Indian Evidence Act. It lays down: 'Whenever it is directed by this Act that the court shall presume a fact it shall regard such fact as proved unless and until it is disproved.' These words do not in terms apply to the General Clauses Act, but we find that the words used are 'shall be deemed' as we have got the words 'shall presume' in para. 2 of Section 4.

10. Let us take an example which no doubt is an extreme case, but it will show that would be the consequence of the contrary conclusion, The example we have in mind is this. Suppose a notice is posted as laid down by Section 27 of the General Clauses Act and the notice is actually returned as undelivered by the Post Office. If the presumption is conclusive, or in other words, if the evidence afforded by 'property addressing, prepaying and posting by registered post' be conclusive evidence of service of notice, the fact that the notice has been returned as undelivered, will not be admissible as evidence of the fact of non-service. This could hardly have been considered a right rule of law by the Legislature, We hold, therefore, that the presumption raised is a reputable presumption.

11. Now the question is whether the fact that the notice was delivered at the place of the assessee is a good service. For this purpose we have to look to the rules framed under the Post Office Act in the Postal Guide. According to para 113 relating to delivery of articles 'No registered article will be delivered to the addressee unless and until he or his agent has signed a receipt for it etc'. The service, therefore, of a notice will be good on the assessee if it is received either

by him or by his agent.

12. This leads us to consider whether the assessee's son Mr. J. DeSouza was or not an agent for his father in the circumstance of this particular case.

13. We find, according to the finding of fact arrived at by the Assistant Commissioner of Income Tax and that Mr. J. DeSouza was technically a minor and was possessed of ordinary intelligence. This would mean that Mr. J. DeSouza was verging on the age of majority and was an intelligent man. We have further facts that he was living with his father and that when on previous occasions notices had to be served on Mr. DeSouza, the assessee, they were taken delivery of by his sons. The fact, that Mr. J. DeSouza was a minor did not prevent him from being an agent of his father for the purpose of accepting delivery of an article. Under Section 184 of the Contract Act as between principal, the father in this case and third persons any person may become an agent. It follows, therefore, that in proper circumstances a minor son may be an agent of his father. We hold, in the circumstances, that the delivery of the postal article, namely the notice was a good delivery. It would follow, therefore, and we hold accordingly that the service of this notice in the circumstances of this case was a good service.

14. Let a copy of this judgment under the seal of the court be sent to the Assistant Commissioner of Income Tax.

15. As regards costs of this reference, the assessee must pay the same, and we assess the fees of the learned Government Advocate at Rs. 100. He will certify to the payment of his fees within the prescribed period.