(supra), special leave petitions preferred by the Union of India have been dismissed on 7.11.2008 and 28.6.2010 respectively. It is pertinent to notice that in the S.L.P. filed in the case of T.N. Peethambaran (supra), vide order dated 19.2.2010 their Lordships' of Hon'ble the Supreme Court recorded that the Union of India had already implemented the judgment dated 7.11.2008 passed by the Kerala High Court in T.N. Peethambaran's case (supra). Copies of the orders dated 7.11.2008 passed by the Kerala High Court in T.N. Peethambaran's case (supra) and the order dated 19.2.2010 passed in S.L.P. (C) CC Nos. 1467-1468 of 2010, are taken on record as Mark 'X' (Colly).

(27) In view of the aforesaid discussion we have no hesitation in upholding the view taken by the Tribunal. Accordingly, the writ petitions are dismissed. The contentions which have been raised by the Exclusive Club of 45 Telegraph Engineers are also rejected.

(28) A photocopy of this judgment be placed on the files of each of the connected cases.

M. Jain

Before Hemant Gupta & Jaswant Singh, JJ.

V.R.A. COTTON MILLS.(P) LTD.,—*Petitioners*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

CWP 18193 of 2011

27th September, 2011

Constitution of India, 1950 - Art. 226 - Income Tax Act, 1961 - Ss. 143(1), 143(2) & 282(1) - General Clause Act, 1887 - S.27 - Contract Act, 1872 - S. 4 - Petitioner challenged the notice issued under Section 143(2) of the Income Tax Act, 1961 contending that notice was served on last date of limitation for initiation of proceedings - meaning of expression 'served' in order to determine the limitation of 6 months mentioned in the proviso of section 143(2) - Held, that expression serve means the date of issue of notice - Date of issue of notice is to be considered compliance of the requirement of proviso to Section 143(2) of the Act.

Held, That the date of receipt of notice by the addressee is not relevant to determine, as to whether the notice has been issued within the prescribed period of limitation. The expression serve means the date of issue of notice. The date of receipt of notice cannot be left to be undetermined dependent upon the will of the addressee. Therefore, to bring certainty and to avoid attempts of the addressee to evade the process of receipt of notice, the purpose of the statute will be better served, if the date of issue of notice is considered as compliance of the requirement of proviso to Section 143(2) of the Act.

(Para 12)

Pankaj Jain, Advocate, *for the petitioner.*

HEMANT GUPTA, J.

(1) Challenge in the present writ petition is to the notice dated 30.09.2010 (Annexure P-1) issued under Section 143(2) of the Income Tax Act, 1961 (for short 'the Act').

(2) The petitioner filed its income tax return on 29.09.2009 for the Assessment Year 2009-10 for the year ending 31.03.2009. Earlier a notice under Section 142(1) of the Act was issued seeking certain information. Subsequently, notice under Section 143(2) was issued on 30.09.2010.

(3) The grievance of the petitioner is that such notice was not served on the assessee till 30.09.2010 i.e. the last date of limitation for the initiation of proceedings for the Assessment Year 2009-10. The relevant provisions of the Act i.e. Section 143(2) of the Act read as under:

> "**143(2)** Where a return has been furnished under Section 139, or in response to a notice under sub-section (1) of Section 142, the Assessing Officer shall –
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> xxx xxx xxx
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> (ii) notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not understated the income or has not been computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein,

either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:-

Provided that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished."

(4) The petitioner has relied upon Section 282(1) of the Act, which contemplates that a notice or requisition may be served on the person therein named either by post or as if it was a summon issued by a Court under the Code of Civil Procedure, 1908. Thus, it is contended that service by affixation at 11.20 pm on 30.09.2010 is not in terms of the Code of Civil Procedure. In support of such contention, learned counsel for the petitioner relies upon a Division Bench judgment of this Court reported as **Commissioner of Income-Tax *versus* AVI-OIL India P. Ltd. (1),** wherein it has been observed that notice under Section 143(2) is not only to be issued, but has to be served before the expiry of 12 months, as was applicable during the relevant assessment year, from the end of the month in which the return was furnished.

(5) A perusal of proviso to Section 143(2) (ii) contemplates that no notice under said clause shall be served on the assessee after the expiry of six months. The question is that what is the meaning of expression 'served'? Whether such expression is to be used literally, so as to mean that actual physical receipt of notice by the addressee or the expression 'served' is inter changeable with the word issue.

(6) We are of the opinion that the expressions 'serve' and 'issue' are interchangeable, as has been noticed in Section 27 of the General Clauses Act, 1887 and also in a judgment of Hon'ble Supreme Court reported as **Banarsi Devi *versus* The Income – Tax Officer, District IV, Calcutta and others (1).** In the aforesaid case, an argument was raised that Section 4 of the Amending Act (Act No.1 of 1959) only saves a notice issued after the prescribed time, but does not apply to a situation where notice is issued within but served out of time. The Court observed as under:

"(10).....Section 4 of the Amending Act was enacted for saving the validity of notices issued under Section 34(1) of the Act. When that Section used a word interpreted by courts in the context of

(1) (2010) 323 ITR 242

(3) AIR 1964 SC 1742

such notices, it would be reasonable to assume that the expression was designedly used in the same sense. That apart, the expressions "issued" and "served" are used as inter-changeable terms both in dictionaries and in other statutes. The dictionary meaning of the word "issue" is "the act of sending out, put into circulation, deliver with authority or delivery". Section 27 of the General Clauses Act (Act X of 1897) reads thus :

"**27. Meaning of service by post** – Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the expression "serve" or either of the expressions "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

It would be seen from this provision that Parliament used the words "serve", "give" and "send" as inter-changeable words. So too, in Sections 553, 554 and 555 of the Calcutta Municipal Act, 1951, the two expressions "issued to" or "served upon" are used as equivalent expressions. **In the legislative practice of our country the said two expressions are sometimes used to convey the same idea. In other words, the expression "issued" is used in a limited as well as in a wider sense.** (emphasis supplied). We must, therefore, give the expression "issued" in Section 4 of the Amending Act that meaning which carries out the intention of the Legislature in preference to that which defeats it. By doing so we will not be departing from the accepted meaning of the expression, but only giving it one of its meanings accepted, which fits into the context or setting in which it appears."

(7) The Hon'ble Supreme Court in **Collector of Central Excise, Madras *versus* M/s M.M.Rubber and Co., Tamil Nadu (3),** examined the provisions in the context of time for the commencement of limitation such as "from the date of decision or order". It has been held that limitation shall commence in the cases where a right of the party is to avail remedy of appeal etc. is concerned from the date of communication of the decision or order appealed against. But if an authority is to exercise a power or to do an act affecting the rights of the parties, he shall exercise that power within the period of limitation. The decision of such authority comes into force and is operative from the date, it is signed by him. The Court held:

> "9. The words "from the date of decision or order" used with reference to the limitation for filing an appeal or revision under certain statutory provisions had come up for consideration in a number of cases, We may state that the ratio of the decisions uniformly is that in the case of a person aggrieved filing the appeal or revision, it shall mean the date of communication of the decision or order appealed against. However, we may note a few leading cases on this aspect.
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> 11. The ratio of these judgments was applied in interpreting Sec. 33A(2) of the Indian Income Tax Act, 1922 in ***Muthia Chettiar v. C.I.T., ILR 1951 Mad 815*** with reference to a right of revision provided to an aggrieved assessee. Section 33A(I) of the Act on the other hand authorised the Commissioner to suo motu call for the records of any proceedings under the Act in which an order has been passed by any authority subordinate to him and pass such order thereon as he thinks fit. The proviso, however, stated that the Commissioner shall not revise any order under that subsection "if the order (sought to be revised) has been made more than one year previously". Construing this provision the High Court in Muthia Chettiar's case held that the power to call for the records and pass the order will cease with the lapse of one year from the date of the order by the subordinate authority

(3) 1992 Supp (1) SCC 471

and the ratio of date of the knowledge of the order applicable to an aggrieved party is not applicable for the purpose of exercising suo motu power. Similarly in another decision reported in Viswanathan Chettiar v. Commr. of Income Tax, Madras, 25 ITR 79 ***Mad***, construing the time limit for completion of an assessment under Section 34(2) of the Income Tax Act, 1922, which provided that it shall be made "within four years from the end of the year in which the income, profit and gains were first assessable", it was held that the time limit of four years for exercise of the power should be calculated with reference to the date on which the assessment or reassessment was made and not the date on which such assessment or reassessment order made under Section 34(2) was served on the assessee.

12. It may be seen, therefore, that, if an authority is authorised to exercise a power or do an act affecting the rights of parties, he shall exercise that power within the period of limitation prescribed therefore. **The order or decision of such authority comes into force or becomes operative or becomes an effective order or decision on and from the date when it is signed by him. The date of such order or decision is the date on which the order or decision was passed or made: that is to say when he ceases to have any authority to tear it off and draft a different order and when he ceases to have any locus panetentiae. Normally that happens when the order or decision is made public or notified in some form or when it can be said to have left his hand. The date of communication of the order to the party whose rights are affected is not the relevant date for purposes of determining whether the power has been exercised within the prescribed time.** *(emphasis supplied)*

13. So far as the party who is affected by the order or decision for seeking his remedies against the same, he should be made aware of passing of such order. Therefore Courts have uniformly laid down as a rule of law that for seeking the remedy the limitation

starts from the date on which the order was communicated to him or the date on which it was pronounced or published under such circumstances that the parties affected by it have a reasonable opportunity of knowing of passing of the order and what it contains. The knowledge of the party affected by such a decision, either actual or constructive is thus an essential element which must be satisfied before the decision can be said to have been concluded and binding on him. Otherwise the party affected by it will have no means of obeying the order or acting in conformity with it or of appealing against it or otherwise having it set. This is based upon, as observed by Rajamanner, C.J. in ***Muthia Chettiar v. C.I.T.*** (supra) "a salutary and just principle". The application of this rule so far as the aggrieved party is concerned is not dependent on the provisions of the particular statute, but is so under the general law.

xxx xxx xxx

18. Thus if the intention or design of the statutory provision was to protect the interest of the person adversely affected, by providing a remedy against the order or decision any period of limitation prescribed with reference to invoking such remedy shall be read as commencing from the date of communication of the order. But if it is a limitation for a competent authority, to make an order the date of exercise of that power and in the case of exercise of suo motu power over the subordinate authorities' orders, the date, on which such power was exercised by making an order are the relevant dates for determining the limitation. The ratio of this distinction may also be founded on the principle that the Government is bound by the proceedings of its officers but persons affected are not concluded by the decision."

(8) The said principle of the issue of a notice or communication has also come up for consideration before the Hon'ble Supreme Court in the context of the provisions of Section 4 of the Contract Act, 1872. It has been held that the moment the proposer puts his proposal in the course

of transmission, it is complete as against the acceptor i.e. addressee. Therefore, the moment the notice is signed and put in the course of transmission by the department, the notice is deemed to be served as the communication is out of the proposer. It has been so held by the Hon'ble Supreme Court in **Bhagwandas Goverdhandas Kedia *versus* Girdharilal Parshottamdas & Co. (4),** wherein it has been held to the following effect:

> "By the second clause of Section 4, the communication of an acceptance is complete as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor. This implies that where communication of an acceptance is made and it is put in a course of transmission to the proposer, the acceptance is complete as against the proposer: as against the acceptor, it becomes complete when it comes to the knowledge of the proposer. In the matter of communication of revocation it is provided that as against the person who makes the revocation it becomes complete when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it, and as against the person to whom it is made when it comes to his knowledge".

(9) Subsequently in **State of Punjab *versus* Khemi Ram (5),** the Court observed as:

> "16. …..It will be seen that in all the decisions cited before us, it was the communication of the impugned order which was held to be essential and not its actual receipt by the officer concerned and such communication was held to be necessary because till the order is issued and actually sent out to the person concerned the authority making such order would be in a position to change its mind and modify it if it thought fit. But once such an order is sent out, it goes out of the control of such an authority, and therefore, there would be no chance whatsoever of its changing its mind or modifying it. In our view, once an order is issued

(4) AIR 1966 SC 543
(5) AIR 1970 SC 214

> and it is sent out to the concerned government servant, it must be held to have been communicated to him, no matter when he actually received it. We find it difficult to persuade ourselves to accept the view that it is only from the date of the actual receipt by him that the order becomes effective. If that be the true meaning of communication, it would be possible for a government servant to effectively thwart an order by avoiding receipt of it by one method or the other till after the date of his retirement even though such an order is passed and despatched to him before such date. An officer against whom action is sought to be taken, thus, may go away from the address given by him for service of such orders or may deliberately give a wrong address and thus prevent or delay its receipt and be able to defeat its service on him. Such a meaning of the word "communication" ought not to be given unless the provision in question expressly so provides. Actually knowledge by him of an order where it is one of dismissal, may, perhaps, become necessary because of the consequences which the decision in *The State of Punjab* v. *Amar Singh Harika AIR 1966 SC 1313* contemplates. But such consequences would not occur in the case of an officer who has proceeded on leave and against whom an order of suspension is passed because in his case there is no question of his doing any act or passing any order and such act or order being challenged as invalid."

(10) Learned counsel for the petitioner has also relied upon the judgment of Hon'ble Supreme Court in **Assistant Commissioner of Income Tax and another *versus* Hotel Blue Moon (6).** But the said judgment does not provide any help to the argument raised. In fact, in para 7 of the said judgment, it has been observed that the Assessing Officer has to issue notice under Section 143 (2) within the prescribed time-limit to make the assessee aware that his return has been selected for scrutiny assessment.

(11) In ***AVI-OIL India P. Ltd. case (supra)***, the provisions of the Contract Act, the judgments of the Hon'ble Supreme Court were not brought to the notice of the Bench; therefore, the Bench has taken a view

(6) (2010) 3 SCC 259

on the literal meaning of word expression "serve". In view of the above, the judgment rendered by the Division Bench of this Court in ***AVI-OIL India P. Ltd. case*** (supra) is in ignorance of the statutory and other binding precedents, therefore, does not lay down any binding principle and the same is *per incuriam.*

(12) Another judgment relied upon by the petitioner is **Kunj Behari *versus* Income Tax Officer, District-II (VI), Amritsar and others (7).** The issue raised in the aforesaid case is not of issuance or serving of a notice, but method of substituted service. The issue raised is not necessary to be decided in the present case, as notice has been issued within the time prescribed. That issuance of notice is sufficient compliance of the provisions of Section 143(2) of the Act. We may notice that Hon'ble Supreme Court in **Commissioner of Sales Tax and others *versus* Subhash & Co. (8),** observed as under:

> "**12.** Whether service of notice is valid or not is essentially a question of fact. In the instant case, learned Single Judge found that certain procedures were not followed while effecting service by affixture. There was no finding recorded that such service was non est in the eye of the law. In a given case, if the assessee knows about the proceedings and there is some irregularity in the service of notice, the direction for continuing proceedings cannot be faulted. It would depend upon the nature of irregularity and its effect and the question of prejudice which are to be adjudicated in each case on the basis of surrounding facts. If, however, the service of notice is treated as non est in the eye of the law, it would not be permissible to direct de novo assessment without considering the question of limitation. There also the question of prejudice has to be considered.
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> xxx xxx xxx

(7) 1983 (139) ITR 73
(8) (2003) 3 SCC 454

22. The emerging principles are :

(*i*) Non-issue of notice or mistake in the issue of notice or defective service of notice does not affect the jurisdiction of the assessing officer, if otherwise reasonable opportunity of being heard has been given.

(*ii*) Issue of notice as prescribed in the Rules constitutes a part of reasonable opportunity of being heard.

(*iii*) If prejudice has been caused by non-issue or invalid service of notice the proceeding would be vitiated. But irregular service of notice would not render the proceedings invalid; more so, if the assessee by his conduct has rendered service impracticable or impossible.

(*iv*) In a given case when the principles of natural justice are stated to have been violated it is open to the Appellate Authority in appropriate cases to set aside the order and require the assessing officer to decide the case de novo."

(13) In view of the said judgment, the date of receipt of notice by the addressee is not relevant to determine, as to whether the notice has been issued within the prescribed period of limitation. The expression serve means the date of issue of notice. The date of receipt of notice cannot be left to be undetermined dependent upon the will of the addressee. Therefore, to bring certainly and to avoid attempts of the addressee to evade the process of receipt of notice, the purpose of the statute will be better served, if the date of issue of notice is considered as compliance of the requirement of proviso to Section 143(2) of the Act. In fact that is the only conclusion that can be arrived at to the expression 'serve" appearing in Section 143(2) of the Act.

(14) Consequently, we do not find any merit in the present petition. The same is dismissed.

Sandhu