

{IN THE INCOME TAX APPELLATE TRIBUNAL, LAHORE BENCH, LAHORE}

Present : Mian Abdul Khaliq, Judicial Member

I.T.A. No. 1562/LB of 1984-85 (Assessment years 1983-84)  
decided on 8-10-1985.

Assessee versus Department

M. R. Farooqi, I.T.P., for the Appellate.

Javid Tahir Butt, A.C., D.R., for the Respondent.

### Head Note

Income-tax Ordinance, 1979 -- Sections 85, 129, 154, 157 --

Demand notice -- Demand notice served on the counsel of the assessee -- Date of receipt of demand notice was stated to have been interpolated in order to make the appeal out of time -- A.A.C. dismissed the appeal as barred by time -- Service of demand notice, whether could be made on a person other than an assessee or any other person liable to any such tax on behalf of the assessee -- Held no -- whether an Advocate/A.R. falls within the ambit of Section 85 -- Held no -- whether dismissal of appeal on the issue of latches was justified -- Held no -- whether in the circumstances, appeal was filed in time -- Held no --

Demand notice -- Service on Advocate/A.R. -- Legality of -- Expression ``An assessee or any other person liable to any such tax on behalf of the assessee'' -- Scope -- Advocate/A.R., appearing before Income-tax Officer in assessment proceedings, held, was not a person liable to tx on behalf of assessee and thus, had not power to receive a demand notice -- Any service of demand notice made on Advocate/A.R., was not valid service on

assessee --

Demand notice -- Service -- Service of demand notice on a person other than as specified in section 85 of Ordinance -- Assessee, held, could not authorise his Advocate/A.R., to accept service of demand notice -- In presence of a specific provision in statute for service of demand notice, no other mode of service would be valid -- Scope of statute cannot be enlarged or extended by intendment -- Interpretation of statute --

Demand notice -- Service -- Acceptance of service of an ordinary notice by Advocate/A.R., as per terms and conditions of power-of-attorney could not be equated with service of demand notice --

Assessment -- Appeal -- Commencement of limitation period -- Appeal of assessee dismissed by first Appellate Authority as being time-barred -- Service of demand notice made by department on Advocate/A.R., of assessee who had no authority under law to accept service -- Such service, held, was no service in eye of law -- Appellate Authority, therefore, erred in dismissing assessee's appeal on ground of limitation time of which counted from service of notice -- Legally no demand notice having been served on assessee as provided under section 85 of Ordinance, no delay could be attributed to assessee in filing appeal -- Appeal of assessee declared to be within time and order of dismissal vacated and appeal remanded for decision afresh by Tribunal --

Service of ``Demand Notice'' on the assessee's Counsel is not a valid service --

Object of service of ``Demand Notice'' on the assessee --

``Assessee'' or ``any other person liable to any such tax on behalf of the assessee'' do not include the Advance or Authorised Representative --

Authority to receive ``any notice'' does not extent to `Demand Notice'' --

No delay can be attributed in appealing against Demand Notice served on the counsel or Authorised Representative --

Interpreation of Statutes -- Scope of an existing specific provision in a Statute cannot be enlarged or extended by intendment -

## ORDER

{The order was passed by MIAN ABDUL KHALIQ, Judicial Member}.  
---This further appeal filed at the instance of an assessee relating to assessment year 1983-84 is directed against an order dated 19-8-1984 passed by the learned AAC of Income-tax, dismissing the assessee's appeal in limine on account of latches.

2. The facts in brief are that the first appellate authority dismissed the assessee's appeal as being time barred holding the same to have been filed on 13-2-1984 as against service of demand notice made on 8-1-1984. The assessee explained that the demand notice was served on its counsel on 24-1-1984 who had no authority under law to accept service of the same. It was also stated that date of receipt of the demand notice was interpolated just to make the appeal out of time. These submissions did not find favour with the first appellate authority who dismissed the appeal as barred by time.

3. The assessee's learned A.R. contended that under Section 85 of the I.T. Ordinance, 1979, (hereinafter called the Ordinance) demand notice is to be served upon ``an assessee'' or any other person liable to any such tax on behalf of the assessee''. It was further submitted that the learned counsel appearing before the ITO in connection with the assessment provided under Section 85 of the Ordinance F because he was neither ``an assessee'' nor ``a person liable to such tax on behalf of the assessee''. When confronted with this situation, the learned departmental representative after perusal of assessment record stated that the power of attorney given by the assessee to its counsel for appearance before the ITO contained provision for acceptance of ``any notice'' on behalf of the assessee and demand notice also being a notice, its service on the assessee's counsel was a valid service in the eye of law.

4. Having given careful consideration to the controversy involved, I find that there is force in the contentions of the learned Authorised Representative of the assessee. It has been correctly pointed out that an Advocate/A.R. appearing before the ITO in the assessment proceedings is not entitled to receive a demand notice and any service of demand notice made on an Advocate/A.R. cannot be termed to be a valid and proper service. When Section 85 of the Ordinance specifically lays down that demand notice is to be served on an ``assessee'' or ``any other person liable to any such tax'', an Advocate/A.R. will not come within the ambit of that provision because of the simple reason that the Advocate/A.R. is neither ``an assessee'' nor ``a person liable to make payment of tax''. Position in the case of an Advocate/A.R. is rather the reverse; as the assessee pays him for the services rendered for appearance before the ITO in the

assessment proceedings. When law does not provide for service of demand notice on a person other than as specified in Section 85 of the Ordinance; even by a power of attorney, the assessee cannot authorise his Advocate/A.R. to accept service of demand notice. In the presence of a specific provision for service of demand notice, no other mode of service will be valid in law. Plea of the learned DR that Demand Notice being a notice and acceptance of service of any notice by the assessee's Advocate having been provided in the power of attorney, the service be deemed to be valid is against established principles of law. When a specific provision exists in a statute, its scope cannot be enlarged or extended by intendment. Legislature had intentionally provided for service of demand notice on an ``assessee'' or ``a person liable to such ``tax'' just to make recovery of tax from a proper person. Thus acceptance of service of an ordinary notice by an Advocate/A.R. as per terms and conditions of power of attorney cannot be equated with service of demand notice. In these circumstances alleged service of demand notice on the assessee's Advocate being no service in the eye of law, the learned AAC erred in dismissing the appeal on the issue of latches. Legally no demand notice having been served as provided under Section 85 of the Ordinance, no delay can be attributed to the assessee in filing the appeal before the 1st appellate authority on 13-2-1984. The appeal filed before the learned AAC is thus held to be in time.

5. As a result I vacate the impugned order and remit the assessee's appeal to the learned AAC for decision on merits.

Appeal allowed.