

# ISSUE & SERVICE OF NOTICE

UNDER I.T.  
PROVISIONS

*(A Self-help Kit)*

<b>Sr. No.</b>	<b>Subject</b>	<b>Page Nos</b>
1	INTRODUCTION	2
2	ISSUE OF NOTICE	2
3	SERVICE OF NOTICE	3
4	ISSUE OF SUMMONS	9
5	ISSUE OF COMMISSION	9
6	CASE LAWS IN DEPARTMENT'S FAVOUR	10
7	CASE LAWS IN ASSESSEE'S FAVOUR	12

## 1. INTRODUCTION

1.1 Issue and service of statutory notices forms an important part of all the proceedings under the Income-tax Act. The proceedings are initiated by issue of proper notice and valid service of that notice and end with proper service of order. In case of any deficiencies in the issue or service of notice , the order may be scrapped on technical grounds by the appellate authority without going into the merits of the order.

1.2 A notice functions as a tool for ensuring natural justice by giving the assessee, in respect of whom any proceeding is proposed to be initiated, an opportunity of being heard. Further, a notice issued to a third party also serves as a means of obtaining information about the assessee and his transactions.

1.3 It is of prime importance that the relevant statutory notice is issued and served properly to the assessee. The assessing officer should ensure the following:-

- i. timely issue of the notice in the prescribed format.
- ii. timely and valid service of such notice.
- iii. maintaining proper record of both issue and service of notice.

## 2. ISSUE OF NOTICE

2.1 Section 282A deals with authentication of notices and other documents:

*“(1) Where this Act requires a notice or other document to be issued by any income-tax authority, such notice or other document shall be and issued in paper form or communicated in electronic form by that authority in accordance with such procedure as may be prescribed.*

*(2) Every notice or other document to be issued, served or given for the purposes of this Act by any income-tax authority, shall be deemed to be authenticated if the name and office of a designated income-tax authority is printed, stamped or otherwise written thereon.*

*(3) For the purposes of this section, a designated income-tax authority shall mean any income-tax authority authorised by the Board to issue, serve or give such notice or other document after authentication in the manner as provided in sub-section (2).]”*

2.2 Further, in sub-section (1) of section 282A , the words “signed in manuscript by that authority”, the words “signed and issued in paper form or communicated in

electronic form by that authority in accordance with such procedure as may be prescribed” have been substituted with effect from the 1st day of June, 2016 in order to cover the issuance of notice in electronic mode.

2.3 The checklist given below may be useful while issuing any notice:-

i	Whether correct notice is issued
ii	Whether notice is in the prescribed format
iii	Whether inapplicable words or clauses have been struck off
iv	Whether notice is addressed to the correct person
v	Whether the address is correct
vi	Whether the name and status along with PAN of the assessee is mentioned correctly
vii	Whether the assessment year is correctly mentioned
viii	Whether the person addressed has been given a reasonable time to respond*
ix	Whether the date, time and venue of hearing has been specifically mentioned in the notice
x	Whether the requirements such as the books/details/documents to be produced or information to be furnished or requirement of personal attendance have been clearly specified in the notice
xi	Whether the notice has been duly signed and seal affixed
xii	Whether issue of a notice has been entered in the note-sheet.**

\* In cases where a minimum time limit is prescribed in the law, time given in the notice should not be shorter than that.

\*\* In cases where reasons for such issue are to be recorded, the date of entry of such reasons must precede the date of actual issue.

### 3. SERVICE OF NOTICE

3.1 A notice can be served in the case of:

- a. **Individual** : upon the relevant person or his family members (excluding minors and servants)
- b. **Firm**: to any partner or manager
- c. **HUF**: to manager or any adult family member (excluding minors)
- d. **Local authority**: to the principal officer
- e. **Company**: to the principal officer or any director (excluding minors)
- f. **AOP or BOI**: to principal officer or any member
- g. **Any other person (except individual)**: to anybody who manages and controls the affairs of the person.)

3.2 The original notice is to be served upon the person concerned and copy of the same should be kept in the file. As per the provisions of section 282 of Income Tax Act,1961, the service of notice of summon or requisition or order or any other

communication under the I.T.Act may be made by delivering or transmitting a copy thereof, to the person therein named by the following modes:

**(a) by post or by such courier services as may be approved by the Central Board of Direct Taxes :-**

Sub-rule (1) of the Rule 127 of the Income Tax Rules, 1962 provides that for the purposes of sub-section (1) of section 282, the addresses (including the address for electronic mail or electronic mail message) to which a notice or summons or requisition or order or any other communication under the may be delivered or transmitted shall be as per sub-rule (2).

Clause (a) of sub-rule (2) of Rule 127 states the following:

*“The addresses referred to in sub-rule (1) shall be- (a) for communications delivered or transmitted in the manner provided in clause (a) or clause (b) of sub-section(1) of section 282-*

- (i) the address available in the PAN database of the addressee; or*
- (ii) the address available in the income-tax return to which the communication relates; or*
- (iii) the address available in the last income-tax return furnished by the addressee; or*
- (iv) in the case of addressee being a company, address of registered office as available on the website of Ministry of Corporate Affairs*

*Provided that the communication shall not be delivered or transmitted to the address mentioned in item (i) to (iv) where the addressee furnishes in writing any other address for the purposes of communication to the income-tax authority or any person authorised by such authority issuing the communication;”*

**(b) as such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons:-**

The Code of Civil Procedure (Order V), 1908 specifies the manner of Issue and service of court summons. It specifies that a notice can be served in the following manner:

- i. Personal service
- ii. By registered post acknowledgement due (RPAD)
- iii. Speed post
- iv. Courier service approved by High Court
- v. Other means of transmission of documents (including fax message or electronic mail service) provided by the rules made by the High Court.

**(c) in the form of any electronic record as provided in Chapter IV of the Information Technology Act, 2000 (21 of 2000) :-**

Clause (b) of sub-rule (2) of Rule 127 states the following:

*“ For communications delivered or transmitted electronically-*

- (i) email address available in the income-tax return furnished by the addressee to which the communication relates; or*
- (ii) the email address available in the last income-tax return furnished by the addressee; or*
- (iii) in the case of addressee being a company, email address of the company as available on the website of Ministry of Corporate Affairs; or*
- (iv) any email address made available by the addressee to the income-tax authority or any person authorised by such income-tax authority”.*

**(d)by any other means of transmission of documents as provided by rules made by the Board in this behalf.**

### **3.3 Service by post**

The procedure for service by post is given in section 27 of the General Clauses Act, 1897 which is mentioned as under :-

**“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, pre-paying 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.*

*Requirements for valid service by post as per aforesaid section 27 of the General Clauses Act, 1897 are:-*

- i. Proper addressing*
- ii. Prepaying*
- iii. Sending by registered post with acknowledgment due.”*

The service of notice is effected when the letter is delivered in the ordinary course by post(with registered AD or through Speed post). The presumption is that the delivery on the assessee has been effected. This is so even if a third person receives the post. The onus of proving otherwise is on the assessee. If the notice comes back with the postal remark “refused”, it will still have the effect of a valid

service. However, if the assessee denies such refusal on oath, the postman must be examined. But if the notice is returned with the postal remarks “Left”, “Not found” or “Not known”, then valid service cannot be presumed. Further, if more than one notices are sent in one envelop, then the envelop should bear the details of all the notices inside it and the dispatch register should be marked with value of stamp covering all dispatches as one. This is necessary because in case of any dispute, the same may be used as an evidence. However, to avoid any future litigation on this matter, and where so possible, every notice may be sent in separate envelop and that separate receipts are pasted in file.

In the context of issuance of notice to be served by post, Gujarat High Court has held in the case of Kanubhai M. Patel Vs. Hiren Bhatt or his successors to office and others reported in 2011334ITR5(Guj) that *“the expression to issue in the context of issuance of notices, writs a process, has been attributed the meaning, to send out; to place in the hands of the proper officer for service..... which in the facts of the present case would the date on which the said notices were actually handed over to the post office for the purpose of effecting service on the petitioners”*. Further, in the recent case of Rajesh Sunderdas Vaswani vs CP Meena – Dy. CIT & 5, the Gujarat High court has elaborately discussed the procedure for service of notice by post. In the aforesaid case, the assessee claimed that notice for re-opening was time-barred as the limitation date was 31/03/2015, while the notice was booked for delivery only on 01/04/2016 as shown by the postal endorsement. However, the department contended that the notice was handed over to the postal authority for delivery on 31/03/2015 itself as was evident from the outward register. The postal pick-up man had duly collected the notice and acknowledged the same by putting his signature on the outward register. The practice of collecting daks and putting signature in the outward register has been followed by the postal pick-up man since the last many years. Further, the Asst. Postmaster General had conveyed to the Chief Postmaster General in a letter that the statement of the concerned postal pick-up man had been taken in the presence of two witnesses and he had confirmed to have picked the concerned notice from the premise of I. T. department on 31/03/2015 after putting his signature on the outward register of the I. T. department. He also confirmed that he had handed over the dak to the postal-in-charge on 31/03/2015 itself. Thus, assessee’s writ petition was dismissed.

#### **3.4 Service on non-residents with no agent in India**

In cases where the addressee is a non-resident, service of notice should be made upon his/her authorized agent in India. If that non-resident has no authorized agent in India, then the notice should be sent by post on the available address.

### 3.5 Service of notice when family is disrupted or firm, etc., is dissolved.

Section 283 (1) provides that :-

*“ After a finding of total partition has been recorded by the Assessing Officer under section 171 in respect of any Hindu family, notices under this Act in respect of the income of the Hindu family shall be served on the person who was the last manager of the Hindu family, or, if such person is dead, then on all adults who were members of the Hindu family immediately before the partition.”*

Section 283(2) provides that:

*“Where a firm or other association of persons is dissolved, notices under this Act in respect of the income of the firm or association may be served on any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before its dissolution.”*

### 3.6 Service of notice in the case of discontinued business.

Section 284 provides that :

*“Where an assessment is to be made under section 176, the Assessing Officer may serve on the person whose income is to be assessed, or, in the case of a firm or an association of persons, on any person who was a member of such firm or association at the time of its discontinuance or, in the case of a company, on the principal officer thereof.”*

3.7 In case of any mistake, defect or omission in the notice, Section 292B protects our action in many ways. Section 292B reads as under:

*"No return of income, assessment, **notice**, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act."*

3.8 **Section 292BB provides that notice deemed to be valid in certain circumstances.** Such circumstances under section 292BB are :-

*“Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him,*

*has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was—*

- (a) not served upon him; or*
- (b) not served upon him in time; or*
- (c) served upon him in an improper manner:*

*Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.”*

### **3.9 Personal service of notice**

Personal service is effected by serving the notice on the assessee or his empowered agent, and obtaining the signature of the recipient on the copy of notice along with date and time of receipt. The notice server can serve the notice on the assessee (or witness as the case may be), his authorized representative or an adult member of his family residing with him. (A servant is not a member of the family for this purpose). The notice server is generally sent for serving routine notices. In cases where the service of notice is likely to be difficult, an Inspector can be deputed.

### **3.10 Service by affixture**

Service by affixture is resorted to in two circumstances: First, when the assessee or his agent refuses to sign the acknowledgement for service or when the serving official, after using all due and reasonable diligence, cannot find the assessee in his residential or business premises within a reasonable time and second, when there is nobody else authorized to receive the notice.

In the above circumstances, the Income Tax Inspector can effect the service by affixture on his own initiative without waiting for an order from the AO. The copy of the notice should be affixed on the outer door or on a conspicuous part of the business or residential premises & a panchnama should be drawn in the presence of two witnesses & their identity proof should be taken. A report is to be drawn up by the Income Tax Inspector, on the facts and circumstances of the service by affixture, specifying the date and time of service and the name of the identifier if any. It should conclude with an affidavit of the Income Tax Inspector solemnly affirming the facts and particulars of service as reported. The report is to be filed as an endorsement to the original notice after being docketed in the order sheet. The report should be verified by an affidavit. In the absence of such an affidavit the Assessing Officer must examine the Inspector on oath.



### **3.11 . Substituted service**

The Assessing Officer can order the service by affixture or by putting a newspaper advertisement under certain circumstances. Such service is called substituted service. This can be resorted when

- i. The AO is satisfied that there is reason to believe that the addressee is keeping out of the way for the purpose of avoiding service.
- ii. The notice cannot be served in the ordinary way for any other reason.

In these cases the AO is expected to pass a speaking order to the effect that he is satisfied as to the existence of the circumstances, which necessitates substituted service. A detailed noting in the note sheet to this effect will satisfy the requirements. The service can be effected by affixing the copy of the notice upon some conspicuous part of the premises in which the person is known to have last resided or carried on business. If service is sought to be effected by a newspaper advertisement, such advertisement must figure in a daily newspaper circulating in the locality in which the addressee is last known to have resided or carried on business.

## **4. ISSUE OF SUMMONS**

Summons may be issued under Section 131 of the Income Tax Act, 1961 to enforce the attendance of an assessee or witness or to compel production of books of accounts and other documents on a specified date. A reasonable period of time should be granted for compliance. The summons is served in the same manner as a notice. The person to whom a summon is issued may appear through an authorized representative, unless his personal attendance is specified in the summons. If the person to whom summon is issued shown his/her inability to appear due to any reason , commission u/s 131(1) (d) may be issued.

## **5. ISSUE OF COMMISSION**

An AO can issue a commission to another officer, which will empower him to call for and examine books of accounts relevant to any proceeding pending before the former. The issue of commission is as per Order 26 of the Civil Procedure Code. While issuing a commission the following points may be kept in mind:

- i. A commission can be issued both within the local limits of the jurisdiction of the AO or outside the jurisdiction of the AO.
- ii. Within jurisdiction, the commission can be issued to any person the AO deems fit in respect of two categories of witnesses:
  - a. A witness who is exempted from personal attendance.
  - b. A witness who is unable to attend due to sickness or infirmity.

iii. Outside the jurisdiction the commission can be issued to any competent authority having jurisdiction to examine a witness.

## **6. CASE LAWS IN FAVOUR OF DEPARTMENT**

6.1 Notice in the name of Company is received by the Director and he attended further proceedings with the department. Later on he cannot challenge validity of service of notice. (Southern Plantations Ltd.Vs Commissioner of Agrl. IT (Ker) 236 ITR 509)

6.2 Chartered Accountant representing the assessee received a notice and assessee ratified receipt of notice – Estoppel from challenging service of notice on Chartered Accountant. (Y. Rajendra, DCIT Vs Khoday Eshwarsa & Sons & Ors. (Kar) 272 ITR 448)

6.3 Notice served on assessee's husband and assessee participating in proceedings – cannot challenge validity of service of notice (CIT Vs Kanti Devi Gupta (MP) 274 ITR 526 CIT Vs Uttam Chand Nahar (Raj) 295 ITR 403)

6.4 Notice served on the father of the assessee who was also the Managing Partner of the firm in which assessee is a partner - valid service of notice (Latha Chandy Vs CIT (Ker) 260 ITR 385 )

6.5 Notices dispatched by Registered Post – Either not received back or received back with endorsement “refused” – Deemed service (Ramesh Khosla Vs ITO & Anr. (P&H) 155 ITR 556)

6.6 Notice send by speed post – It is reasonable to infer that it was served within 3-4 days (Capital Gem Overseas (P) Ltd. Vs ITO ( ITAT, Del ) 101 ITD 117)

6.7 Service of notice on agent – Different persons have acted in the past in absence of power agent to receive notices – Service on one such person – Notices were complied with – Assessee raised no objection before ITO – Such service constitute valid service. (A.K. M. Govindaswamy Chettiar & Ors.Vs ITO (Mad) 244 ITR 559 X Vs. ITO (ITAT, Bang) 9 ITD 715 CIT Vs Regency Express Builders P. Ltd. (Del) 291 ITR 55)

6.8 Receipt of notice by employee who endorsed his acknowledgement under the seal of firm – Valid service (M.X. De Nornha & Sons Vs CIT (All) 18 ITR 928)

6.9 Service of notice on Counsel authorized to receive all documents – Valid service (Sultanpur Kshetriya Gramin Bank Vs JCIT (All) 336 ITR 156)

6.10 Though the notice sent to assessee firm was served on a person who was not a partner of assessee firm, it is valid as the assessee failed to establish that such person was a stranger and was not concerned with day-to-day business of the firm. (Salar Publications Trust Vs ITO & Anr. (Kar) 235 ITR 13)

6.11. Record not disclosing envelope undelivered or received back – Presumption that notice served not rebutted by assessee – Valid service within time (CIT Vs Madhysy Films P. Ltd. (Del) 301 ITR 69)

6.12 Revenue having dispatched the notice to assessee and again redirected it in another address furnished by assessee, it is evident that assessee declined to accept the notice – Due service provided under sec. 27 of General Clauses Act. (Mayawati Vs CIT & Ors. (Del) 222 CTR 117)

6.13 Assessee having filed return in response to notice under sec. 148 and also actively participated in assessment proceedings thereafter, by its conduct, abandoned the right to claim non-service of the notice under sec. 148. Thus the irregularities got cured by subsequent conduct of the assessee. (Yogesh Kumar & Sons (HUF) Vs AO (ITAT, Asr) 115 TTJ 696 CIT Vs Three Dee Exim Pvt. Ltd. 2011-TIOL-196-HC-DEL-IT Thistle Properties (P) Ltd. Vs ACIT (ITAT, Mum) 134 ITD 6 )

6.14 Assessee challenged service of notice on the ground that he was hospitalized during that period – Records showed that for contesting the notice u/s 148 dated 04-04-2005, assessee purchased stamp paper on 09-04-2005 for giving power of attorney to his C.A. – Claim for non-service of notice rejected “Avneeshkumar Singh Vs ITO (ITAT, Agra-TM) 126 ITD 1

6.15 Photocopy of original notice served on assessee – Sufficient since the purpose is served (Ambica Steels Ltd. Vs DCIT (ITAT, Del) 118 ITD 116)

6.16 Notice u/s 143(2) dated 23-10-02 dispatched on 25-10-02 by speed post was undelivered or received back - normally it is presumed that this notice has reached the Assessee within 2/3 days - this presumption has not been rebutted by the Assessee - no affidavit filed - notice held to be valid (2008 (1) TMI 473 - ITAT LUCKNOW-B Income-Tax Officer. Versus Bedi Enterprises)

6.17 S. 282B: Law on validity of service of notices by "Speed Post" instead of "Registered Post A/D" explained:- Registered post would take within its sweep not only 'speed post' but also all other mails forming part of the establish system of mails in which their receipt and movement is recorded to assure safe delivery. All the principal attributes of 'registered post' were inherently present in 'speed post', so that the two were of the same genus (Color Craft vs. ITO (ITAT Mumbai)

6.18 In a recent judgement dated 22/06/2016 of Gujarat High Court in special civil application No.2554 of 2016 in the case of Rajshah Enterprises (P) Ltd. Vs. C. P. Meena, Dy. CIT & 2..., the assessee challenged notice dated 31/03/2015 to re-open

the assessment claiming that service of notice before the last statutory date has not been established. Facts of the case were that AO got the notice served upon the representative of the 'A' named Krishna Yadav through hand delivery and also service through affixture by drawing panchnama in the presence of two witnesses. And collecting photocopies of their driving license and PAN card. 'A' claimed that he had not appointed any such person named Krishna Yadav to receive notice on its behalf, hence service of notice is of no legal validity w.r.to affixture. 'A' submitted affidavit of one of the witnesses, Nimesh Kr. D. Chaudhary, who disowned his signature on the panchnama and claimed he was at Mehsana at that time and hence could not have signed as panch. The High Court observed that the signature of Nimesh Kr. D. Chaudhary on his affidavit and signature on the panchnama carry great degree of similarity. *"Nevertheless, if the theory of the petitioner is that the on the panchnama is completely concocted, we wonder how the person fabricated the signature, can bring about such closed similarities be that it may, we are not inclined to conclude this issue in a writ petition, since it is a highly disputed question of fact"*. With these words, the High Court dismissed the writ petition.

## **7. CASE LAWS IN FAVOUR OF THE ASSESSEE**

7.1 In CIT vs. Ramendra Nath Ghosh, 82 ITR 888(SC), the Inspector of Income-tax, who was the service officer, claimed to have served the notice by affixing it on the assessee's place of business, but in his report did not mention the names and addresses of the persons who identified the place of business of the assessee, nor did he mention in his report or in the affidavit filed by him that he personally knew the place of business of the assessee. In this background, it was held by the Supreme Court, on the basis of Rule 17 of Order V of the CPC, that the service of notice was not in accordance with the law. The Supreme Court said that the High Court, after going into the facts of the case very elaborately and after examining several witnesses, had come to the conclusion that the service made was not proper. This view was upheld by the Supreme Court.

7.2 In Addl. CIT vs. Prem Kumar Rastogi, 124 ITR 381 (All), the assessee was an HUF. The service was made on one Shri R.K. Rastogi, who was not a member of the assessee-HUF and, thus, not an authorised agent of the assessee. At the High Court, the revenue stressed that, in the past, notices used to be served on Shri R.K. Rastogi and the assessee never took any objection that the service of notices on Shri R.K. Rastogi was improper or invalid. While stating that may be so, the Court said that fact by itself did not make Shri R.K. Rastogi an authorised or recognised agent of the HUF.

7.3 In CIT vs. Girdharilal, 147 ITR 379 (Raj), it has been held that it is well settled that the power of attorney given to an agent should be construed strictly and from that power of attorney only such authority which has been conferred expressly or by implication should be taken into consideration. In this case, the power of attorney appointed Shri R. Singh to appear before all Income-tax authorities on his behalf in

proceedings for the assessment year 1961-62. He was authorised to attend, file applications, seek adjournments, produce books, answer queries and to do all those acts which the assessee was personally authorised to do in connection with the said proceedings. The assessment proceedings were completed in March, 1966. In February, 1968, being unable to serve on the assessee personally, the Commissioner, in proceedings under section 263 of the Act, sent the notice to Shri R. Singh, as the power of attorney holder of the assessee. It was held by the Court that the power of attorney given to Shri R. Singh was in respect of the assessment year 1961-62 and the proceedings contemplated by that power attorney were assessment proceedings of the assessment year 1961-62 and the proceedings relating to appeal from the assessment order pertaining to the assessment year 1961-62. The Court stated that the assessee could not have contemplated any proceedings for revision of the assessment under section 263 of the Act. Therefore the service was not valid and a proper opportunity to be heard had not been given to the assessee. Inter alia, the Court was guided by the decision in Krishnaji vs. Waman Rao, AIR 1977 Bom 36, where it was held that the authority of an Advocate in the original court would come to an end if the suit or proceeding is transferred from one court to a totally distinct court. Here the Judge had opined that all vakalatnamas and appearances are filed for a particular court and it is for a suit or proceeding in that court that the Advocate is authorised to, and obliges himself to, appear and that neither the client nor the Advocate can be bound by the authority given with reference to a particular court if the proceedings were transferred to a different court.

7.4 Mere knowledge of a notice is not equivalent to proper service. In B. Johar Forest Works vs. CIT, 107 ITR 409 (J&K), it was held that the notice must be served in one of modes provided in the Act before an assessee could be considered to be default. Notice was served on one T, who was an employee of the assessee. The General Manager of the firm applied for extension of time to file the return. The Court held that this fact may at best be suggestive of the fact that the General Manager had known about the issuance of such a notice. However, acquisition of knowledge in regard to issuance of a notice, the Court held, could not be considered as equivalent to, or a substitute for, the service of the notice on the assessee. A similar view was taken in CIT vs. Dey Brothers, 3 ITR 213 (Rang.), where the Court held that the mere fact that the notice had in some way or other reached the person upon whom it was to be served was not sufficient to comply with a requirements of a proper service of notice.

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