

Court No. - 35

Case :- INCOME TAX APPEAL No. - 133 of 2001

Appellant :- Late Lala Chandra Bhan Bansal

Respondent :- The Commissioner Of Income Tax

Counsel for Appellant :- Shakeel Ahmad

Counsel for Respondent :- Gaurav Mahajan

Hon'ble Bharati Sapru,J.

Hon'ble Piyush Agrawal,J.

(Delivered by Hon'ble Piyush Agrawal, J)

The present appeal has been filed under Section 260(A) of Income Tax Act against the order dated 29.6.2001 passed by the Tribunal, Agra in ITA No. 7342/Del/1992 for the assessment year 1988-89.

By order dated 9.3.2005, the aforesaid appeal was admitted on five questions of law, as framed in the memo of appeal. When the matter came up for hearing, the counsel for the appellant has pressed only question No. E which reads as follows:-

"E. Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal erred in law and on facts while holding that the notice under Section 143(2) was validly served within limitation and that the proviso to section 143 did not apply to a return filed in response to notice under Section 148 of the Act."

On 19.1.1989, a search and seizure operation was conducted under Section 132(1) at the business premises of Chandra Timber Group and the residential premises of their partners. The appellant belongs to Chandra Timber Group of assessee.

On 16th May, 1989, the order under Section 132(5) was passed and the income of the appellant was computed at Rs. 22,73,000/-.

Feeling aggrieved by the aforesaid order, the appellant filed an appeal before the CIT (Appeals), Agra who by its order dated 31st May, 1992 partly allowed the appeal.

Feeling aggrieved by the said order a cross appeal was filed both by the appellant as well as by the Revenue. The Tribunal by the impugned order has partly allowed the appeal of the appellant and dismissed the appeal filed by the Revenue.

Heard Mr. Shakeel Ahmad, learned counsel for the appellant and Mr. Gaurav Mahajan, learned counsel for the Revenue.

It was argued by Mr. Shakeel Ahmad, that even assuming the notice under Section 148 was issued on 8.11.1989 it was not properly served on appellant but it was served upon the son of the appellant. On 10.11.1989, in compliance of the same, the returns were filed on 30.11.1990 even then the assessing authority was bound to look into the matter independently and apply its mind to the contents of fresh return and then issue notice under Section 143(2) of the Act. The satisfaction of reason to believe must be recorded by him and in absence of such reasons, no proceeding is permitted under the law.

In support of the contention, he relied upon a judgement and order of this Court reported in [2011] 336 ITR 678, **Commissioner of**

Income-tax vs. Rajeev Sharma and Commissioner of Income-tax (Central) vs. Smt. Meenakshi Devi reported in [2015], 229 Taxman 365 (Allahabad).

On the contrary, the counsel for the Revenue has relied upon the order passed by the Tribunal and has tried to argue that once the return has been filed then technical objection cannot be permitted to be raised by the assessee counsel.

We have perused the record of the case and the order passed by the Tribunal. Paragraphs 2.13 and 2.14 of the order of the Tribunal dated 20.6.2001 read as follows:-

"2.13 Second issue relates to the service of notice under section 143(2) of the Act, proviso to Section 143(2) was amended w.e.f. 1.10.91 Assessment year in question is A.Y. 1988-89. The unamended proviso provided that where the return has been made under Section 139 or in response to a notice under Section 142(1), no notice under Section 143(2) shall be served on the assessee after expiry of financial year in which the return is furnish or the expiry of six months from the end of the month in which the return is furnished which ever is a later. The amended proviso for the service of notice under Section 143(2) is said to have been served on the assessee on 12.12.91....."

2.14 Above provisions make it amply clear that provide to Section 143(2) did not include a return filed in response to notice under Section 148. It has limited itself to the return filed under Section 139 or in response to notice under Section 142(1). This signifies to note that section 139, 142(1) and Section 148, all the sections provide for filing of returns in their response. By including section 139 and 142 (1) within the scope of proviso to Section 142(2) the law makers have made it abundantly clear that the limitation period imposed in proviso to Section 142(2) was not applicable to the return filed in response to notice under Section 148 of the Act. As this is substantive provision of law, we hold that the 1d. Counsel's submissions in this regard have no force and the same

rejected. Accordingly, we hold that the notice under section 143(2) was validity served within limitation."

It is admitted case between the parties that after issuance of notice under Section 148 the assessee in response to the same had submitted the return but after receiving the return no notice as prescribed under the Act was issued to the appellant.

The statute provides that after filing of return, the assessing authority should apply its mind. After considering the fresh material on record and after recording reasons to believe, then issue notice under Section 143(2) of the Act afresh.

The case in hand, the record reveals that in response to the notice under Section 148, the returns were filed in consequence thereof, the officer has to apply his mind to the contents of fresh return and then issue a notice under section 143(2) of the Act which has not been done in the present case. The satisfaction under reasons to believe must be recorded by the assessing officer after applying mind to the contents of fresh return before issuing notice under Section 143(2) of the Act.

In the case of **Commissioner of Income Tax vs. Rajeev Sharma** (supra) paragraphs 27 ,32 and 45 reads as follows:-

"27. In view of the above, in absence of any notice issued under sub-section (2) of section 143 after receipt of fresh return, submitted by the assessee in response to notice under section 148, the entire procedure adopted for escaped assessment, shall not be valid.

32. Since return was filed on 7.2.2002, in response to notice under Section 148 of the Act, earlier notice dated 29.03.2001 may not be

treated as valid for the purpose of escaped assessment. The Legislature to their wisdom had categorically provided that after receipt of notice under Section 148 of the Act a fresh return may be filed and in consequence thereof, the Assessing Officer has to apply his mind to the contents of fresh return and then issue a notice under Section 143 (2) of the Act. The satisfaction under reason to believe, must be recorded by the Assessing Officer after applying mind to the contents of fresh return before issuing a notice under Section 143 (2) of the Act.

33. It is a settled law that taxing statute should be construed strictly without subtraction or addition of words, in the statutory provisions. Accordingly, the provisions contained in Section 148 of the Act with regard to escaped assessment, must be construed strictly with regard to procedure prescribed for escaped assessment.

45. In view of the above, the provision contained in Section 143 (2) of the Act is mandatory in nature and it shall be obligatory for the Assessing Officer to apply mind to the contents of the return filed in response to notice under Section 148 of the Act and record reasons and thereafter, issue notice under Section 143 (2) of the Act before proceeding to decide the controversy with regard to escaped assessment."

Paragraph 4 of the Judgement rendered in the case of **Smt. Meenakshi Devi** (supra) reads as follows:-

"....that no notice was issued under Section 143 (2) of the Income Tax Act, no assessment order under Section 143 (3) of the Act could have been passed. In the light of the aforesaid, the Tribunal was justified in quashing the assessment proceedings on the ground that no valid notice under Section 143 (2) of the Act was ever issued to the assessee."

In view of the aforesaid judgements and facts of the case, it reveals that the provision contained in Section 143(2) of the Act is mandatory in nature and it shall be obligatory for the Assessing Officer to apply mind to the contents of the return filed in response to notice under Section 148 of the Act and record reasons and thereafter, issue notice under Section 143(2) of the act before proceeding to decide the controversy with regard to escaped assessment.

In view of the aforesaid fact, the appeal is allowed and question of law as framed above is answered in favour of the appellant and against the Revenue.

Order Date :- 8.3.2019

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