

pmw

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INCOME TAX APPEAL NO.1197 OF 2015**

Commissioner of Income Tax – 1 ... Appellant
Vs.
Blue Star Ltd. ... Respondent

Mr. Suresh Kumar for the Appellant.
Mr. Niraj Shetty i/by Mr. Atul K. Jasani for the Respondent.

**CORAM : A.S. OKA &
A.K. MENON, JJ.**

DATE : 4th DECEMBER, 2017

PC.

1 Heard the learned counsel appearing for the appellant – revenue. He has pressed into service the following substantial questions of law :-

“(1) Whether on the facts and in the circumstances of the case and in law, ITAT was justified in annulling the assessment proceedings where the assessee has never objected during the course of assessment proceedings regarding the validity of notice u/s.148; and in light of the affidavit filed by the then Assessing Officer before ITAT dated 24-03-2014 in this regard?

(ii) Whether on the facts and in the circumstances of the case and in law, the ITAT has failed to consider the fact

that the A.O. possessed the information with him and recorded the reasons for reopening on 30-03-2010 but the same was inadvertently typed as 31-03-2010 which is as stated by the A.O. in his affidavit dated 24-03-2014 filed by the erstwhile A.O. and it was just a typographical error.”

2 The respondent – assessee preferred an Appeal against the order passed by the Assessing Officer under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (for short “the said Act”). Before CIT (Appeals), a specific contention was raised that the Assessing Officer issued a notice under Section 148 on 30th March, 2010 whereas he recorded reasons for reopening the assessment on 31st March, 2010. The CIT (A) held that recording of reasons was *sine qua non* for issuing a notice under Section 148 of the said Act. Therefore, the first Appellate Authority proceeded to set aside the re-assessment made by the Assessing Officer. Being aggrieved by the order of the first Appellate Authority, the appellant – revenue preferred an Appeal before the Income Tax Appellate Tribunal, B Branch at Mumbai. Before the Appellate Tribunal on 24th March, 2014 an affidavit was filed by the Assessing Officer in which he contended that though he had dictated reasons on 30th March, 2010, he signed the same on 31st March, 2010. The Appellate Tribunal proceeded to dismiss the Appeal filed by the Appellant – revenue.

3 The learned counsel appearing for the appellant relied upon the affidavit dated 24th March, 2014 filed by the Assessing Officer which records that on 30th March, 2010 he dictated the reasons. The affidavit shows that the reasons/ grounds were recorded before the notice was issued under Section 148 of the said Act on 30th March, 2010. He submitted that this was sufficient compliance with Sub-Section (2) of Section 148 of the said Act. He would, therefore, submit that the proceedings were not initiated on the basis of the notice dated 30th March, 2010.

4 We have given careful consideration to the submissions. An Appeal against the order of Assessing Officer was preferred by the respondent – assessee on 25th January, 2011. During the pendency of the said Appeal which was decided on 20th June, 2011 no such affidavit was filed by the Assessing Officer. On 8th September, 2011 the appellant – assessee preferred an Appeal before the Appellate Tribunal. From the impugned judgment, it appears that the Appeal was heard 3½ years thereafter on 19th February, 2015. The affidavit relied upon by the learned counsel appearing for the appellant was belatedly filed on 24th March, 2014 which is nearly 2½ years after the Appeal was preferred before the Appellate Tribunal. Thus, what was stated in the affidavit was clearly an afterthought.

5 Nevertheless the affidavit has been taken into consideration by the Appellate Tribunal. The Appellate Tribunal noted that even assuming that the Assessing Officer had dictated reasons on 30th March, 2010, in fact the reasons were signed by him admittedly on 31st March, 2010. The Appellate Tribunal, in our view, rightly held that the process of recording reasons as per the mandate of Sub-Section (2) of Section 148 of the said Act was completed when the Assessing Officer signed the reasons on 31st March, 2010. Thus, even before recording reasons under his signature, a notice under Section 148 was already issued on 30th March, 2010. Therefore, the Appellate Tribunal was right in holding that even if the case made out in the affidavit belatedly filed by the Assessing Officer is correct, it will not advance the case of the appellant – revenue any further. No substantial question of law arises. The Appeal is dismissed. There will be no order as to costs.

(A.K. MENON, J)

(A.S. OKA, J)