Court No. - 35

Case :- INCOME TAX APPEAL No. - 238 of 2009
Appellant :- Commissioner Of Income Tax-Ii,Kanpur
Respondent :- M/S Kanpur Plastipack Ltd.
Counsel for Appellant :- Shambhu Chppra
Counsel for Respondent :- A. Bansal,S.K. Garg

Hon'ble Bharati Sapru,J.
Hon'ble Vinod Kumar Misra,J.

Heard Sri Ashish Agrawal, learned counsel for the department and Sri A. Bansal, learned Counsel for the assessee.

This is an Income Tax Appeal filed by the department under Section 260A of the Income Tax Act, 1961 against the order dated 23.12.2008, passed by the Income Tax Appellate Tribunal in I.T.A. No.870/Luc./2006, for the Assessment Year 1996-1997. The substantial question of law referred to is hereunder:-

"Whether on the facts and circumstances of the case, the Hon'ble Income tax Appellate Tribunal was justified in holding that the reassessment proceedings were invalid and quashed the assessment order on the ground that notice u/s 148 was not validly served without appreciating the fact that Shri R.P. Tripathi, Accountant on whom the notice u/s 148 was served, had duly been given the power to conduct the entire case, which is evident from the Power of Attorney given on 26.08.97 during the course of assessment proceedings as well as Power of Attorney given on 19.12.2002 during the course of reassessment proceedings?"

There is no dispute with regard to the facts. The question itself states that Sri R.P. Tripathi, Accountant on whom the notice under Section 148 of the Income Tax Act, 1961 was served on 28.5.2002, had duly been given the Power of Attorney to conduct the assessment proceedings for that year.

The Power of Attorney dated 19.12.2002, has been placed before this Court, which reads as under :-

"POWER OF ATTORNEY

BEFORE THE ASSISTANT COMMISSIONER OF INCOME TAX RANGE-6, KANPUR FOR THE ASSESSMENT YEAR A.Y. 1996-97

I, M.S. Agarwal, Managing Director of M/s. Kanpur Plastipack Limited, D-19-20, Panki Industrial Area, Kanpur, do hereby authorise Shri R. R. Jain-FCA, Shri Sunil Gupta-FCA, Shri D.S. Kapoor, General Manager (Finance & Commercial), Shri S. Chaudhary, Manager (Accounts) and Shri R. P. Tripathi, Asstt. Manager (Taxation) as our authorised representative to represent the above case.

Every explanation/statement given by the said authorised persons pertaining to the above case shall be binding upon us.

The signature of the above mentioned persons are duly attested by me hereinbelow :-

For KANPUR PLASTIPACK LIMITED

M. S. AGARWAL

MANAGING DIRECTOR"

From perusal of the Power of Attorney, it is abundantly clear that the power of attorney was confined the authority of the representative to conduct the case. It did not include in it any authority to accept any fresh notice. The requirement of law is clearly given under Section 282 of the Income Tax Act, which reads as under :

"282. Service of notice generally.- (1) The service of a notice or summon or requisition or order or any other communication under this Act (hereafter in this section referred to as "communication") may be made by delivering or transmitting a copy thereof, to the person therein named,—

(a) by post or by such courier services as may be approved by the Board; or

(b) in such manner as provided under the Code of Civil Procedure, 1908 (5 of 1908) for the purposes of service of summons; or

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

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

(2) The Board may make rules providing for the addresses

(including the address for electronic mail or electronic mail message) to which the communication referred to in sub-section (1) may be delivered or transmitted to the person therein named.

Explanation.—For the purposes of this section, the expressions "electronic mail" and "electronic mail message" shall have the meanings as assigned to them in Explanation to section 66A of the Information Technology Act, 2000 (21 of 2000).

Authentication of notices and other documents.

282A. (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 signed in manuscript by that authority.

(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.

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

67.*Substituted by the Finance (No. 2) Act, 2009, w.e.f. 1-10-2009. Prior to its substitution section 282 read as under:*

"282. Service of notice generally.- (1) A notice or requisition under this Act may be served on the person therein named either by post or as if it were a summons issued by a court under the Code of Civil Procedure, 1908 (5 of 1908).

2. *Any such notice or requisition may be addressed-*

(a) in the case of a firm or a Hindu undivided family, to any member of the firm or to the manager or any adult member of the family;

(b) in the case of a local authority or company, to the principal officer thereof;

(c) in the case of any other association or body of individuals, to the principal officer or any member thereof;

(d) in the case of any other person (not being an individual), to the person who manages or controls his affairs."

67. For relevant case laws, see Taxman's Master Guide to Income-

tax Act.

68.*For the text of Explanation to section 66A, see Appendix.*

69.*Inserted by the Finance Act, 2008, w.e.f. 1-6-2008.*

Allotment of Document Identification Number.

282B

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

Shri R.P. Tripathi was not the Principal Officer of the Company nor there is any material to show that he has been authorised by the company to accept any notice. Such being the case, the Tribunal was correct in coming to the conclusion that the re-assessment proceedings, which were initiated on the basis of the notice dated 28.5.2002, were vitiated. The requirement of law is well known under a statute of certain act is required to be done in a certain manner which must be done in that manner, failing which, proceeding stands vitiated. The question of law, therefore, is decided in favour of the assessee and against the department.

The appeal has no merit and is, accordingly, dismissed. No costs.

Order Date :- 7.11.2016

m.a.

(Vinod Kumar Misra, J.) (Bharati Sapru, J.)