<u>Court No. - 39</u>

Case :- INCOME TAX APPEAL No. - 451 of 2005

Appellant :- Commissioner Of Income Tax, (Cental), Kanpur
Respondent :- Smt. Meenakshi Devi
Counsel for Appellant :- S.C.,B. Agrawal,R.K. Upadhyay
Counsel for Respondent :- Deepak Kumar Singh,Pankaj Agarwal

<u>Hon'ble Tarun Agarwala,J.</u>
<u>Hon'ble Om Prakash-VII,J.</u>

We have heard Sri R.K. Upadhyay, learned counsel for the appellant and Sri Rahul Agarwal, the learned counsel for the opposite party.

The Appeal was admitted on the following substantial question of law :

"*Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal has erred in law in holding that the assessment framed under Section 143 (3) was void ab initio and in quashing / canceling the same, without appreciating the ratio of the decision of the jurisdictional High Coiurt in the case of Sant Baba Mohan Singh Vs. CIT reported in 90 ITR 197 wherein it was held that "the omission of the Income tax officer to issue notice u/s 23 (3) did not affect the ab initio jurisdiction enjoyed by the Income tax officer in respect of the proceedings*."

We find that the contention of the appellant that a notice under Section 143 (2) of the Income Tax Act was issued by speed post on 17.3.2003 and again on

9.2.2004 is incorrect. The Commissioner of Income Tax (Appeal) as well as the Tribunal have given a categorical finding that the said notice so issued by speed post was a notice for penalty and was not a notice under Section 143 (2) of the Income Tax Act. This, being a finding of fact, cannot be agitated now in these proceedings.

In view of the fact 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 ***Harsingar Gutkha (P.) Ltd. Versus Commissioner of Income-tax reported in [2012] 20 taxmann.com 713 (All.),*** a Division Bench of this Court held as under :

"*A perusal of the provisions of Section 143 (2) of the Act shows that the service of the notice on the assessee within the period provided under the proviso is mandatory. In the absence of the notice being served within the stipulated period under section 143 (2) of the Act, the assessment proceeding comes to an end and is deemed to have become final. Reliance is being placed on the decisions in the case of CIT v. M. Chellappan [2006] 281 ITR 444 (Mad), Vipan*

Khanna v. CIT [2002] 255 ITR 220 (P&H), CIT v. C. Palaniappan [2006] 284 ITR 257 (Mad), CIT v. Bhan Textiles P. Ltd. [2006] 287 ITR 370 (Delhi), CIT v. Lunar Diamonds Ltd. [2006] 281 ITR 1 (Delhi) and Deputy CIT v. Mahi Valley Hotels and Resorts [2006] 287 ITR 360 (Guj)."

The said decision is squarely applicable in the instant case and accordingly the substantial question of law so framed is answered against the appellant and in favour of the assessee.

Learned counsel for the appellant has filed an application today seeking permission that three more substantial questions of law arise for consideration, which should be adjudicated by the Court.

Having given our thoughtful consideration in the matter, we find that since the assessment order was void ab initio, further dealing with the question of law as framed by the appellant does not arise for consideration.

In view of the aforesaid, the appeal fails and is accordingly dismissed..

Order Date :- 8.12.2014

ss

(Om Prakash-VII,J.) (Tarun Agarwala,J.)