

HIGH COURT OF MADHYA PRADESH : AT JABALPUR

ITA No : 82 of 2012

CIT, Jabalpur
- V/s -
M/s S. Goyanka Lime and Chemicals Ltd.

ITA No : 83 of 2012

CIT, Jabalpur
- V/s -
M/s S. Goyanka Lime and Chemicals Ltd.

ITA No : 84 of 2012

CIT, Jabalpur
- V/s -
M/s S. Goyanka Lime and Chemicals Ltd.

ITA No : 87 of 2012

CIT, Jabalpur
- V/s -
M/s S. Goyanka Lime and Chemicals Ltd.

ITA No : 88 of 2012

CIT, Jabalpur
- V/s -
M/s S. Goyanka Lime and Chemicals Ltd.

ITA No : 89 of 2012

CIT, Jabalpur
- V/s -
M/s S. Goyanka Lime and Chemicals Ltd.

Present : **Hon'ble Shri Justice Rajendra Menon.**
 Hon'ble Shri Justice Sanjay Yadav.

In all the cases:-

Shri Sanjay Lal, counsel for the appellants.

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Shri L.L. Sharma, counsel for the respondents.

Whether approved for reporting:

Yes / No.

JUDGMENT
14/10/2014

As common questions of law and fact are involved in all these appeals filed under section 260-A of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), all the appeals are being decided by this common order.

2- Challenge in all these appeals are made to concurrent orders passed by the Commissioner (Appeals) and the Income Tax Appellate Tribunal, Jabalpur in the matter of quashing notices issued under section 148 of the Act.

3- A search was conducted at the residential and business premises of the assessee on 12.12.2002. Thereafter, notice for block assessment under section 158-BC was issued for the block period 1.4.1998 to 12.12.2002 and for each of the assessment years, returns were filed which were processed under section 143(1). However, notice under section 148 was issued by the Assessing Officer on 31.12.2004, on the basis of certain reasons recorded. The assessee objected to the same before the Assessing Officer, this was rejected by the Assessing Officer and he completed the assessment under section 143(3) read with section 147, of the Act. Appeals were filed before the Commissioner of Income Tax (Appeals) and the Appellate Authority found that the reason recorded by the Joint Commissioner of Income Tax, for according sanction, it only stated that 'I am Satisfied'. As this action for sanction was without application of mind and as this was done in a mechanical manner, following the law laid down in the case of **Arjun Singh Vs. Assistant Director of Income Tax (MP)**, reported in [2000] 246 ITR 363, the Commissioner quashed the notice under section 148, of the Act,

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and the same having been upheld by the Appellate Tribunal, these appeals have been filed.

4- Shri Sanjay Lal, learned counsel for the appellants, invited out attention to the Explanation added to section 151, by the Finance Act, 2008 retrospectively with effect from 1.10.1998; and, the Circular issued by the Department in this regard on 7.3.2009, to say that the Joint Commissioner is only required to be satisfied on the reasons recorded by the Assessing Officer and there is no further requirement for him to issue notice himself.

5- Placing reliance on the aforesaid and certain judgment of the Gujarat High Court, in the case of **Lalita Ashwin Jain Vs. Income Tax Officer,(2014) 88 CCH 273 [Guj HC]**; and, the Supreme Court in the case of **Commissioner of Income Tax (Central) – I, New Delhi Vs. Vatika Township (P) Limited, (SC) 2014 ITL 833**, Shri Sanjay Lal – learned counsel for the appellants, prays for interference into the matter.

6- However, Shri L.L. Sharma – learned counsel for the respondents, placed reliance on another judgment of the Gujarat High Court in the case of **Cargo Clearing Agency (Gujarat) Vs. Joint Commissioner of Income Tax, (2008) 307 ITR 1 (Guj)**, to say that for block assessment and re-assessment, there is no jurisdiction to reopen the block assessment by issuing notice under section 148 and, therefore, on the basis of this judgment learned counsel states that the entire procedure initiated for issuing notice under section 148 is unsustainable.

7- We have considered the rival contentions and we find that while according sanction, the Joint Commissioner, Income Tax has only recorded so “Yes, I am satisfied”. In the case of **Arjun Singh** (supra), the same question has been considered by a Coordinate Bench of this Court and the following principles are laid down:-

“The Commissioner acted, of course, mechanically in order to discharge his statutory obligation properly in the matter of recording sanction as he merely wrote on the format “Yes, I am satisfied” which indicates as if he was to sign only on the dotted line. Even otherwise also, the exercise is

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shown to have been performed in less than 24 hours of time which also goes to indicate that the Commissioner did not apply his mind at all while granting sanction. The satisfaction has to be with objectivity on objective material.”

8- If the case in hand is analysed on the basis of the aforesaid principle, the mechanical way of recording satisfaction by the Joint Commissioner, which accords sanction for issuing notice under section 148, is clearly unsustainable and we find that on such consideration both the appellate authorities have interfered into the matter. In doing so, no error has been committed warranting reconsideration.

9- As far as explanation to Section 151, brought into force by Finance Act, 2008 is concerned, the same only pertains to issuance of notice and not with regard to the manner of recording satisfaction. That being so, the said amended provision does not help the revenue.

10- In view of the concurrent findings recorded by the learned appellate authorities and the law laid down in the case of **Arjun Singh** (supra), we see no question of law involved in the matter, warranting reconsideration.

11- The appeals are, therefore, dismissed.

(RAJENDRA MENON)
J U D G E

(SANJAY YADAV)
J U D G E

Aks/-