



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.398 OF 2001

The Commissioner of Income Tax. ..Appellant.

Vs.

Smt. Suman Waman Chaudhary. ..Respondent.

Mr. B.M.Chatterji with Ms. P.P. Bhosale and  
Mr.P.S.Sahadevan for the Appellant.

Mr.S.N. Inamdar and A.K. Jasani for the Respondent.

**CORAM : F.I. REBELLO &  
R.S. MOHITE, JJ.  
DATED : 12TH FEBRUARY,2008.**

PC :

1. While holding that the notice issued was without jurisdiction, the tribunal noted that under Section 151 the Assessing Officer who is below the rank of Asstt. Commissioner or Dy.Commissioner has to record the reasons and the said reasons require approval of the Dy. Commissioner or the Joint Commissioner and he has to satisfy that the reasons recorded by the A.O. are sufficient for issue of such notice. The tribunal has recorded a finding of fact that I.T.O. has recorded the reasons on 6.12.1989 and on the same date notice was issued. The tribunal has further held that the contention of the assessee that the approval of the Dy. Commissioner was not obtained by the I.T.O. before issuance of notice has not been controverted by the learned D.R. and on this and other reasons it is held that the notice is not with conformity with action and is without jurisdiction. This finding of the ITAT that

prior approval was required has not been controverted. Only ground made is that the ITAT concerning Section 151(2) proceeded erroneously. In our opinion, this is a clear finding and under Section 151(2) prior approval of the concerned authority before issuance of notice is required. Considering the finding recorded by the ITAT under Section-151, it is not necessary to discuss the finding on the point of issue of notice under Section 292 B.

2. In view of the above facts, the order of the ITAT cannot be faulted and consequently the appeal dismissed.

**(R.S. MOHITE, J.)**

**(F.I. REBELLO, J.)**