

Court No. - 32

Case :- INCOME TAX APPEAL No. - 493 of 2008

Petitioner :- Commissioner Income Tax

Respondent :- Smt. Reshma Arif

Petitioner Counsel :- A.N.Mahajan

Hon'ble Ashok Bhushan,J.

Hon'ble Prakash Krishna,J.

The appeal is admitted on the question nos. 1 and 2 as framed in the memo of appeal and is being heard with the consent of the parties.

Heard Shri Shambhu Chopra, learned counsel for the appellant and Shri S.D. Singh for the respondent.

This Appeal under Section 260A of the Income Tax,Act, 1961 (hereinafter called the "Act, 1961") has been filed against the judgment and order of the Income Tax Appellate Tribunal, Lucknow Bench, Lucknow (hereinafter called the "Tribunal") dated 21/9/2007 in I.T.A. No.06/LUC/2006 & C.O.No.11/Luc/2006 for the Assessment Year 1995-96. The assessment was made for the year in question by order of the Assessing Officer dated 28/3/2002. A notice under Section 148 of the Act, 1961 dated 22/5/2000 was issued by the Assessing Officer with the previous approval of the Joint Commissioner of Income Tax. The Assessing Officer completed the assessment and issued notice of demand and Challan. Assessee filed an appeal before the CIT(Appeals) which was disposed of. Appeal was filed by the Revenue before the Tribunal against which cross objection was filed by the assessee. The assessee in her cross objection raised a ground that initiation of re-assessment proceedings under Sections 147/148 of the Act, 1961 was without jurisdiction on the ground that necessary sanction as required by Section 151 (2) of the Act, was not obtained and notice under Section 148 of the Act has been issued by the Income Tax Officer. The Tribunal relying on a judgment of this Court in **Dr. Shashi Kant Garg Vs. Commissioner of Income-Tax & Ors,(2006) 285 ITR 158 (All)**, held that notice having been issued by the Assessing Officer entire proceedings is

vitiated. The Tribunal observed in paragraph 7 which is to the following effect:

"7.In the instant case, the notice u/s 148 has been issued by the IT), Ward-3(1), Kanpur and not by the Jt. C.I.T. In view of the decision of the Hon'ble Allahabad High Court (supra), the jurisdiction was not correctly assumed by the AO before issuing notice and hence, all subsequent proceedings are quashed for want of jurisdiction. Accordingly, we quash the reassessment proceedings."

The Tribunal came to the conclusion that the jurisdiction was not correctly assumed by the Assessing Officer, hence all proceedings were quashed. Revenue has filed the appeal against the said judgment and order of the Tribunal dated 21/9/2007. In the present case, there was a approval dated 08/5/2010 by Joint Commissioner, Income Tax which has been mentioned in the assessment order itself.

Learned counsel for the appellant submits that after the approval by the Joint Commissioner of Income Tax, notice is not necessary to be issued by the Joint Commissioner, but it can be very well be issued by the Assessing Officer. He submits that in the present case notice was issued by the Assessing Officer after obtaining approval by the Joint Commissioner and there was no error in the notice issued to the petitioner under Section 148 of the Act, and the Tribunal while taking erroneous view of the matter held that the entire proceedings were without jurisdiction.

Shri S.D. Singh, learned counsel for the respondent submitted that the respondent is not disputing that approval was obtained from the Joint Commissioner. He has also referred to the judgment of the Division Bench of this Court in **Ajai Verma Vs. Commissioner of Income-Tax & Anr**, (2008) 304 ITR 30 (All) in which case this Court after referring to the judgment of **Dr. Shashi Kant Garg** (supra) has laid down that the Assessing Officer was empowered to issue notice under Section 148 of the Act, 1961 when there is approval by the Joint Commissioner. Following was

laid down in paragraphs 10,11,12 and 13:

“ 10. In the case before us, the Income-tax Officer, who is below the rank of the Joint Commissioner and who is an Assessing Officer according to the definition given in the Income-tax Act, 1961, was empowered to issue the notice under section 148 of the Act in the light of the sanction accorded for such issuance of notice by the Commissioner of Income-tax.

11. Learned counsel for the petitioner has argued that the Commissioner could not have given the sanction and only the Joint Commissioner could have given the sanction.

12. We are unable to accept the submission, considering the basic purpose for which such sanction has been provided for. The obvious purpose is to exercise proper supervision by a superior officer of the Department.

13. The other submission from the side of the petitioner is that the assessment order under section 144 of the Act was annulled in appeal and the Department has gone up in further appeal and, thus, the assessment should be deemed to be pending. The submission proceeds to say that when an assessment proceeding is pending, there is no question of issue of notice under section 148 of the Act.”

Section 151 of the Act, 1961 provides for sanction for issue of notice. In the said section an explanation has been added by Finance Act, 2008 with effect from 1/10/1998 clarifying that if the Joint Commissioner, Commissioner or the Chief Commissioner is satisfied on the reasons recorded by the Assessing Officer about the fitness of a case for the issue of notice under section 148 he need not issue such notice himself. Section 151 of the Act, 1961 along with the explanation is quoted below:

“ Sanction for issue of notice.

151. (1) In case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by

such Assessing Officer that it is a fit case for the issue of such notice :

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of [Joint Commissioner], after the expiry of four years from the end of the relevant assessment year, unless the [Joint Commissioner] is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

[Explanation: For the removal of doubts, it is hereby declared that the Joint Commissioner, the Commissioner or the Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.]”

The explanation which has been added by the Finance Act, 2008 clarifies the whole situation and makes it clear that it is not necessary that the Joint Commissioner himself may issue notice.

Shri S.D. Singh, learned counsel for the respondent submitted that the explanation which was added was not available when the Tribunal decided the matter. The submission is correct. However, the explanation being clarificatory and having been made with retrospective effect shall cover the above issue.

In view of the above, we answer both the questions in favour of the revenue. The appeal is allowed. The judgment and order of the Tribunal dated 21/9/2007 is hereby set-aside. In view of the fact that the Tribunal has not considered the appeal and cross-objections on merits, we remit the matter to the Tribunal for fresh consideration. The appeal as well as the cross objection

are restored before the Tribunal which may be expeditiously disposed of. The parties shall bear their own cost.

Order Date :- 1.6.2012

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