

Court No. - 24**Case :-** INCOME TAX APPEAL No. - 58 of 2008**Petitioner :-** Commissioner Of Income Tax-I, Lucknow**Respondent :-** M/S M.I. Builders Pvt. Ltd.**Petitioner Counsel :-** D.D. Chopra**Respondent Counsel :-** J.N. Mathur, Jaideep Narayan Mathur*along with***Case :-** INCOME TAX APPEAL No. - 172 of 2008**Petitioner :-** Commissioner Of Income Tax-I**Respondent :-** M/S M.I. Builders Pvt Ltd. Lucknow**Petitioner Counsel :-** D.D. Chopra**Hon'ble Rajiv Sharma, J.****Hon'ble Devendra Kumar Upadhyaya, J.**

Heard Sri D.D. Chopra, learned Counsel for the appellant and Sri Jaideep Narain Mathur, assisted by Sri Mudit Agarwal, learned Counsel for the respondent.

Income Tax Appeal No. 58 of 2008 arises out of the judgment and order dated 7.9.2007 passed by the Income Tax Appellate Tribunal, Lucknow Bench, Lucknow in Appeal No. I.T.A. No. 111/Luc./2006 for the Assessment Year 1997-1998, whereby the appeal preferred by the respondent-M/s M.I. Builders Pvt. Ltd., Lucknow was allowed, *inter alia* on the ground that notice issued under Section 148 (1) of the Income-tax Act by ACIT, Range-IV, Lucknow was without jurisdiction and invalid.

Income Tax Appeal No. 172 of 2008 arises out of the judgment and order dated 30.5.2008 passed by the Income Tax Appellate Tribunal, Lucknow Bench, Lucknow in Appeal No. I.T.A. No. 278/Luc./2008 for the Assessment Year 1997-98, whereby the appeal preferred by the department against the order canceling the penalty imposed under Section 271 (1) (c) of the Income-tax Act, 1961 [hereinafter referred to as the "**Act**"] for the Assessment Year 1997-1998 was dismissed *inter alia* on the grounds that since the Tribunal, vide order dated 7.9.2007 passed in I.T.A. 111/Luc./2006, cancelled the re-assessment order relating to Assessment Year 1997-1998, as stated hereinabove, on the basis of which the Assessment Officer has levied penalty, as such, the penalty cannot stand by itself and the same is liable to be cancelled.

Since question of law and facts involved in the above

captioned income tax appeals are similar in nature, as such, they are being decided by a common order.

Respondent/Assessee M/s M.I. Builders Pvt. Ltd., Lucknow [hereinafter referred to as "**Company**"] is a private limited company and is engaged in the civil construction activity and is being assessed to tax since 1989-999 and onwards. The registered office of the company was located at 2nd Floor, Karamat Market Complex, Nishatganj, Lucknow till the Assessment Year 2001-2002. On the basis of the location of its registered office, the jurisdiction over the Assessee was with ACIT, Company Circle, Lucknow. The Assessee had filed the return of income from Assessment Year 1989-1990 to 2000-2001 with ACIT, Company Circle, Lucknow. Later on, there was change in the nomenclature of the Assessing Officers due to re-organization and re-structuring in the Income-tax Department and jurisdiction over the corporate assessees having their registered office in Nishatganj area vested with ACIT, Range-4, Lucknow. The return for the Assessment Year 2001-2002 was filed with ACIT, Range-4, Lucknow. Subsequently, Assessee had shifted its registered office to 6th Floor, New Janpath Complex, 9A Ashok Marg, Lucknow w.e.f. 22.11.2001.

The CCIT, Lucknow, while exercising power vested under Section 120 of the Act, revised the territorial jurisdiction of the Assessing Officer w.e.f. 1.8.2001 and as per the fresh order so passed, the jurisdiction over the corporate assessees vested with the Assessing Officer exercising the jurisdiction as per location of their respective registered offices and as the registered office of the respondent/assessee has shifted at Ashok Marg/Hazratganj, Lucknow, the jurisdiction is vested with Additional CIT, Range-I, Lucknow and as such, the Assessee filed its returns of income for Assessment Years 2002-2003, 2003-2004 and 2004-2005 with the Additional CIT, Range-I, Lucknow, which was duly accepted and processed by the Additional CIT, Range-I, Lucknow.

On 6.4.2004, a notice under Section 148 of the Act for the Assessment Year 1997-1998 was issued to the Assessee

from ACIT, Range-4, Lucknow, requiring the Assessee to file return of income for the Assessment Year 1997-1998. On receipt of notice, the Assessee has filed an objection regarding the jurisdiction of the Assessing Officer, Range-4, Lucknow vide letter dated 19.4.2004. However, the ACIT, Range-4 transferred the record of the Assessee to the Income Tax Officer-1 (I), Lucknow. Thereafter, fresh notice under Section 142 (1) dated 27.1.2005 was issued to the Assessee by the Income-tax Officer 1(I), Lucknow in continuation of the proceedings initiated by the Assessing Officer, Range-4, Lucknow.

The Assessee has raised the objection with regard to continuation of the proceedings by Income-tax Officer 1 (I), Lucknow on the ground that the said proceedings are illegal as the notice under Section 148 of the Act issued on 6.4.2004 itself was devoid of proper jurisdiction and *ab initio* void but the Income-tax Officer-1 (I), Lucknow, without considering the objection, continued to proceed in the matter and passed the Assessment Order, assessing Rs.22,00,000/- as income of the Assessee and directed to initiate the penalty proceedings under Section 271 (1) (c) of the Act.

Feeling aggrieved by the inaction of the Assessing Officer, the Assessee preferred an appeal before the Commissioner, Income-tax (Appeal)-I, Lucknow, who, vide order dated 23.11.2005, dismissed the appeal, against which, the Assessee preferred second appeal, bearing No. 111/LUC/2006, before the Income Tax Appellate Tribunal, Lucknow.

During the pendency of the above second appeal, penalty order dated 8.3.2006 was passed by the Assessing Officer against the Assessee, against which, Assessee has preferred an appeal before the Commissioner Income-tax (Appeals)-1, Lucknow, who, vide order dated 31.1.2008, allowed the appeal and cancelled the penalty order dated 8.3.2006. Feeling aggrieved, the revenue preferred an second appeal, bearing No. ITA No. 278/LUC/2008, before the Tribunal.

The Tribunal, after considering the whole aspect of the matter involved in ITA No. 111/LUC/2006, allowed the appeal of the Assessee vide order dated 7.9.2007 on the ground that notice issued under Section 148 (1) of the Act by ACIT, Range-4, Lucknow was without jurisdiction and, therefore, the subsequent proceedings are invalid.

Feeling aggrieved by the order dated 7.9.2007, the revenue has preferred Income Tax Appeal No. 58 of 2008.

While entertaining the Income Tax Appeal No. 58 of 2008, this Court, vide order dated 23.1.2008, admitted the appeal on the following substantial questions of law :

"1. Whether on the fact and circumstances of the case the Income Tax Appellate Tribunal was right in law in holding that the notice issued u/s 148 of the Income Tax Act, 1961 was without jurisdiction when the assessing officer issuing the said notice had valid jurisdiction while passing the assessment order in the case of the assessee for the A.Y. 2001-02 just six days before the issue of notice u/s 148.

2. Whether on the fact and circumstances of the case, Income Tax Appellate Tribunal was justified in entertaining the fact that jurisdiction was challenged u/s 124 of the Act especially when this was not done before the same assessing officer during the assessment proceeding for the A.Y. 2001-02."

During the pendency of the above Income Tax Appeal No. 58 of 2008, the Tribunal, vide order dated 30.5.2008, dismissed the appeal, bearing No. ITA No. 278/LUC/2008, *inter alia* on the grounds that since the Tribunal, vide order dated 7.9.2007 passed in I.T.A. 111/Luc./2006, cancelled the re-assessment order relating to Assessment Year 1997-1998, as stated hereinabove, on the basis of which the Assessment

Officer has levied penalty, as such, the penalty cannot stand by itself and the same is liable to be cancelled.

Sri D.D.Chopra, learned Counsel for the appellant submits that the Assessee had not informed to the Income Tax Department about shifting of its office at 6th Floor, New Janpath Complex, 9A Ashok Marg, Lucknow and as such, computer systems had shown the address of the Company of Assessee as 2nd Floor, Karamat Market Complex, Nishatganj, Lucknow. Accordingly, the ACIT, Range-4, Lucknow issued notice under Section 148 of the Act to the address available on the record of the income tax department. However, on the objection raised by the Assessee that his office has been shifted to Ashok Marg, therefore, ACIT, Range-4, Lucknow has no jurisdiction, the ACIT, Range-4, Lucknow, transferred the matter to the ACIT, Range-1, Lucknow, who, without issuing fresh notice under Section 148 of the Act issued a notice under Section 142 (1) of the Act, treating to be the proceedings in continuation of the earlier notice. Therefore, notice issued under Section 148 of the Act cannot be held as lacking jurisdiction but the Tribunal erred in not considering the contention of the appellant in the right prospective and allowed the appeal of the Assessee.

Refuting the contention of the learned Counsel for the appellant, Sri Jaideep Narain Mathur, learned Counsel for the respondent/assessee submits that for the purpose of shifting the registered office, the Assessee followed the due process of law as provided under the Companies Act viz. it passed a resolution in the meeting of the Board of Directors, gave due intimation to the Registrar of Companies and also put advertisement in the newspaper regarding change of address. He further submits that an intimation with regard to change of address by the Company has also been given to the Income Tax Authorities. Thus, the order passed by the Tribunal has no illegality and infirmity.

Having heard learned Counsel for the parties and perusing the records, we are of the view that on 29.3.2004, when the notice under Section 148 (1) of the Act was issued,

ACIT, Range-IV, Lucknow have no jurisdiction over the Assessee on the date of issuance of such notice as the jurisdiction over the Assessee was transferred to the Additional CIT, Range-I, Lucknow vide order dated 1.8.2001 passed under Section 120 of the Act by the CCIT, Lucknow. Therefore, it cannot be situation where two Assessing Officer would have simultaneous jurisdiction over the assessee, one being Additional CIT, Range-I, Lucknow and other being ACIT, Range-IV, Lucknow. In these backgrounds, the Tribunal has rightly held that the issuance of notice under Section 148 (1) of the Act by the ACIT, Range-IV, Lucknow was without jurisdiction.

In view of the above, substantial question so framed at the time of the admission of Income Tax Appeal No. 58 of 2008 is answered in negative.

With regard to Income Tax Appeal No. 172 of 2008, on perusal of the records, it reflects that it has not been admitted as yet.

Considering the peculiar facts and circumstances of the case, we do not find that any substantial question of law arises for consideration involved in Income Tax Appeal No. 172 of 2008.

Both the Income Tax Appeals are dismissed.

Order Date :- 28.5.2012

Ajit/-