(2008) 10 DEL CK 0133

In the Delhi High Court

Case No : Income Tax Appeal No. 1203 of 2008

Commissioner of Income Tax APPELLANT

Vs

Mani Kakar RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:
Income Tax Act, 1961 — Section 143(3), 147, 148, 292BB

Citation : (2009) 178 TAXMAN 315

Hon'ble Judges : Rajiv Shakdher, J;Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : P.L. Bansal, for the Appellant; Salil Aggarwal and Prakash Kumar, for the Respondent

Judgement

1. This appeal pertains to the assessment year 2001-02 and is directed against the order dated 15-2-2008 passed by the Income Tax Appellate Tribunal in ITA 4828/Delhi/2004. The only issue that is sought to be raised in this appeal pertains to the question of notice u/s 147/148 of the Income Tax Act, 1961 (hereinafter referred to as the ''said Act'').

2. The assessment had been re-opened and an assessment order had been framed. Being aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), which was also dismissed. Before the Tribunal, the assessee raised the point of jurisdiction inasmuch as according to the assessee no notice u/s 148 had been issued/ served upon the assessee and, therefore, all subsequent proceedings including the framing of the reassessment order, according to the assessee, were liable to be set aside. The Tribunal permitted the assessee to take the additional plea before it inasmuch as it was a jurisdictional plea which went to the root of the matter. After examining the issue on facts, the Tribunal concluded that there was no service of notice on the assessee u/s 148. Consequently, the Tribunal held that the assessment made u/s 147/143(3) was bad in law and the same was liable to be quashed.

3. We have heard the learned Counsel for the appellant as well as the counsel for

the respondent, who is present on advance notice. We find that the factual position is that no notice whatsoever was served on the assessee prior to the re-opening of the assessment proceedings. Proceedings u/s 147 of the said Act cannot be initiated without the service of notice as provided in Section 148 of the said Act. The service of notice is a pre-condition for framing an assessment order u/s 147. The learned Counsel for the appellant sought to place reliance on the provisions of Section 292BB of the said Act which has been introduced with effect from 1-4-2008.

4. However, we feel that no reliance on that provision can be placed for two reasons. The first reason being that the said provision is not applicable to the assessment year 2001 -02. The second reason being that this argument was not at all being raised before the Tribunal. In fact, the argument could not have been raised before the Tribunal because the amendment itself was introduced subsequent to the passing of the order, which is impugned herein)

5. For all these reasons, we feel that no substantial question of law arises for our consideration. The appeal is dismissed.

