

(2017) 03 AHC CK 0216
In the Allahabad High Court
Case No : 87 of 2009

Km. Teena Gupta

APPELLANT

Vs

Commissioner Income Tax Bareilly

RESPONDENT

Date of Decision : 30-03-2017

Acts Referred:

[Income Tax Act, 1961](#), [Section 144](#), [Section 144](#), [Section 144](#), [Section 144](#), [Section 148](#), [Section 148](#), [Section 148](#), [Section 148](#), [Section 142\(1\)](#), [Section 142\(1\)](#), [Section 142\(1\)](#), [Section 142\(1\)](#), [Section 143\(2\)](#), [Section 143\(2\)](#), [Section 143\(2\)](#), [Section 143\(2\)](#), [Section 260A](#), [Section 260A](#), [Section 260A](#), [Section 260A](#), [Section 148\(1\)](#), [Section 148\(1\)](#), [Section 148\(1\)](#) -
Uttar Pradesh Sales Tax Act, 1948, Section 21

Citation : (2017) 03 AHC CK 0216

Hon'ble Judges : Bharati Sapru, Saumitra Dayal Singh

Bench : Division Bench

Advocate : Rakesh Ranjan Agarwal, Suyash Agarwal, Praveen Kumar, S.Chopra

Final Decision : Allowed

Judgement

1. The present income tax appeal under Section 260 A of the Income Tax Act, 1961 (hereinafter referred to as the "Act") has been filed by the assessee against the order dated 2.3.2009 of the Income Tax Appellate Tribunal, Delhi Bench, New Delhi for the assessment year 1997-98.

2. The above appeal was admitted on the following questions of law:-

(A) Whether on the facts and circumstances of the case, the ITAT was correct to hold that not mentioning of assessment year in the notice u/s 148 dated

11.5.2000 would not make the reassessment proceedings illegal since the 142(1) notice dated 13.6.2000 mentioned the assessment year and the assessee was aware of the fact that the proceedings u/s 148 has been initiated for A.Y. 1997-98?

(B) Whether the ITAT has rightly ignored that service of the valid notice u/s 148 is a condition precedent to assume jurisdiction of reassessment and mere knowledge or?

(C) Whether non supply of the reasons alongwith the notice u/s 148 of the Act can validate the reassessment proceedings. Mithlesh Kumar Tripathi Vs. CIT 2006 UPTC 155?

(D) Whether the reassessment order passed u/s 144/148 of the Act, was not invalid and rightly affirmed by ITAT, when the notice u/s 143(2) of Act was not served on the appellant, as provided under Clause (b) of proviso to section 148(1) of Act, as inserted by Finance Act, 2006, effective from 01.10.1991?

(E) Whether the ITAT rightly affirmed the invoking of section 69A of the Act holding that the appellant had a capital of Rs. 1,50,000/- to Rs. 1,75,000/- without bringing any material on record?

3. Briefly it has been contended by the assessee that a notice initiating reassessment proceedings to the assessment year 1997-98 had been issued against him dated 11.5.2000 without any reference to a assessment year. Subsequently, on 13.6.2000 a notice under Section 142(1) of the Act was issued in respect of assessment proceedings for the assessment year 1997-98. Thereafter, on 4.7.2000 an exparte assessment order was passed under Section 144/148 of the Act in the case of the assessee for the assessment year 1997-98.

4. It has been further shown to us that in the appeal against the reassessment order dated 4.7.2000, the assessee had raised specific ground setting up invalidity in the reassessment proceedings on account of non-disclosure of the assessment year in the reassessment notice dated 13.6.2000. The CIT (Appeals) dismissed the appeal on 28.2.2001 without adjudicating the aforesaid ground. In further appeal to the Tribunal again the assessee raised the specific ground setting up invalidity of the reassessment proceedings for reasons of non disclosure of the assessment year in the reassessment notice.

5. We have heard Sri Suyash Agarwal, learned counsel for the assessee and Sri Praveen Kumar, learned counsel for the department. At the very outset, Sri Suyash Agarwal, learned counsel for the assessee has confined his argument on question no.1.

6. The Tribunal by its impugned order, dealt with the aforesaid objection raised by the assessee and negatived his claim. According to the Tribunal the assessee having not raised this ground at the stage of reassessment proceedings itself, it had conceded the same and the assessee did not have any grievance at that time. Thereafter the Tribunal has also relied on the notice issued under Section

142(1) of the Act dated 13.6.2000 to come to the conclusion that the reassessment proceedings were valid.

7. It is settled law that the reassessment notice is a jurisdictional notice and it is equally settled law that ground of lack of jurisdiction may be raised at a subsequent stage as well. In the instant case the reassessment order was admittedly an *ex parte* order and, therefore, there was no occasion for the assessee to have conceded to the reassessment proceedings.

8. Further, in the instant case, it is clearly being shown by the assessee that he had raised specific ground both before the CIT (Appeals) and also before the Tribunal, challenging the jurisdiction of the Assessing Officer.

9. This Court in the case of *Smt Prabha Rani Agarwal Vs. Income Tax Officer* and another reported in 2013 (351) ITR 275 (All) has held as under:-

"16. In the case of *Laxmi Narain Anand Prakash* 46 STC 71 (All) [FB]; [1980] UP Tax Cases 125 (All), a Full Bench of this Court has held that further notice under Section 21 of the U.P. Sales Tax Act, 1948, having been improperly served the initiation of proceedings was without jurisdiction and it could not be validated by participation of the assessee in the proceedings and the invalidity of the notice goes to the very root of the matter and the whole proceedings has been vitiated in law. If it is found that the notice instead of being addressed to the dealer was addressed to an entity which did not exist, the defect in the notice was fatal to the assumption of jurisdiction by a Sales Tax Officer."

10. Further the Court had also held as under:-

26. From the aforesaid decisions, it follows that (i) a question relating to jurisdiction which goes to the root of the matter can always be raised at any stage, be in appeal or revision, (ii) initiation of proceedings under section 147 of the Act and/or service of notice are all questions relating to assumption of jurisdiction to assess escaped income, (iii) if an issue has not been decided in appeal and the matter has simply been remanded, the same can be raised again notwithstanding with the fact that no further appeal has been preferred, (iv) in the reassessment proceedings, relief in respect of item which was not originally claimed can not be claimed again as the reassessment proceedings are for the benefit of the Revenue and (v) relief can only be claimed in respect of the escaped income. Applying the principles laid down in the aforesaid cases to the facts of the present case, we find that in the first round of proceedings before the Commissioner of Income Tax (Appeals), the appellant had specifically questioned the validity of the proceedings initiated under section 148 of the Act. That issue was not decided by the Commissioner (Appeals) who had remanded the matter for fresh assessment after providing opportunity of hearing. The question relating to the jurisdiction assumed under section 147/148 of the Act goes to the very root of the matter and it can be raised in appeal for the first time. The appellant had raised this question again in appeal and, therefore, it was incumbent upon the Commissioner of Income Tax (Appeals) to adjudicate upon the grounds taken

before him. In fact, he had casually observed that the proceedings under section 148 of the Act had been validly initiated but, wrongly applied the principles laid down by the Apex Court in the case of Sun Engineering Works P. Ltd. [1992] 198 ITR 297 (SC).

27. Before the Tribunal, the appellant had challenged the adverse findings recorded by the Commissioner of Income Tax (Appeals) by raising 4 specific grounds which we have already reproduced hereinbefore. The Tribunal had erred in law in declining to permit the appellant to raise those grounds.

28. The approach of the Commissioner of Income Tax (Appeals) is erroneous in law for the reason that in the grounds of appeal filed against the order dated 21.03.1997, a specific ground relating to validity of proceedings initiated under section 148 of the Act had been taken which was not gone into by the Commissioner of Income Tax (Appeals) while setting aside the assessment. The principles laid down by the Apex Court in the case of Sun Engineering Works P. Ltd. (supra) would not apply as the appellant is not claiming any deduction or relief on the taxability of any item in the reopened assessment proceedings which had not been claimed in the original assessment. The Tribunal had also erred in law in holding that as no appeal had been filed by the appellant against the order 05.02.1998 passed by the Commissioner of Income Tax (Appeals), the same had become final and the appellant can not be permitted to raise any ground relating to the validity of the proceedings under section 148 of the Act in the remand proceedings."

11. In view of the above, we are of the view that the issue of validity of reassessment proceedings is a jurisdictional issue. It goes to the root of the matter. The Tribunal ought to have examined the ground no.3 raised in the assessee's appeal on its merit without being prejudiced by the facts that the reassessment order has been passed on the ex parte basis in which the proceedings the assessee has not objected to the initiation of the reassessment.

12. Accordingly, question no.1 is answered in favour of assessee and against the department.

13. The appeal is allowed. The order of the Tribunal is set aside and the matter is remitted to the Tribunal to decide afresh in accordance with law.