(2021) 07 DEL CK 0099

In the Delhi High Court

Case No : Income Tax Appeal No. 1000, 1024 Of 2019, 1 Of 2020, Civil Miscellaneous Application No. 55079, 55466 Of 2019, 40 Of 2020

Pr. Commissioner Of Income Tax (Central)-3 APPELLANT

Vs

Suresh Kumar Gupta RESPONDENT

Date of Decision : 15-07-2021

Acts Referred:
Income Tax Act, 1961 — Section 143(1), 143(3), 147, 147(1), 151, 151(I), 151(2), 260A, 292B

Citation : (2021) 07 DEL CK 0099

Hon'ble Judges : Manmohan, J;Navin Chawla, J

Bench : Division Bench

Advocate : Ajit Sharma

Final Decision : Dismissed

Judgement

Sr.,A.Y,"Returned

Income","Assessed

Income","Assessed

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Issue of

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1,"2004-

05",450313,450313,143 (1),25-8-10,CIT,"Para No.2.4

of the order","Joint

CIT

2,"2005-

06",855600,855600,143 (1),25-8-10,CIT,"Para No.2.4

of the order","Joint

CIT

3,"2006-

07",945320,945320,143 (1),25-8-10,CIT,"Para No.2.4

of the order","Joint

CIT

4,"2007-

08",747140,747140,143 (1),25-8-10,CIT,"Para No.2.4

of the order","Joint

CIT

(iii) In case the original assessment is completed ""other than"" i.e. otherwise than under Section 143(3) or during the course of reassessment",,,,,,,,

proceedings, competent authority would be the Joint Commissioner.",,,,,,,,

7. The ITAT examined the applicability of Section 292B based upon the decision

in S.P.L's Siddhartha Ltd (supra), which rejected the",,,,,,,,

revenue's contention about its application holding that where a jurisdictional infirmity strikes at the root, invalidating the issuance of",,,,,,,,

notice, Section 292B cannot rescue it.",,,,,,,,

8. The Revenue's argument seems plausible and even logical because the Commissioner or a Chief Commissioner is unarguably ranked,,,,,,,,

higher in authority than a Joint Commissioner. Yet at the same time, this Court has to give effect to plain words of the statute which",,,,,,,,

unambiguously states that the competent authority in such cases is the Joint Commissioner (and not the Chief Commissioner or the Principal,,,,,,,,

Commissioner). The Revenue's submissions that all such cases, are covered under proviso to Section 147(1), the competent authority for",,,,,,,,

prior approval would be four superior officers, renders Section 151 (2) superfluous. If anything the Court is clear that it is not its job to",,,,,,,,

render, in the process of interpretation, an entire provision academic or inoperative. This court is of the opinion that accepting the",,,,,,,,

Revenue's position would result in that consequence. The Court also invokes the principle enunciated by the Privy Council in Nazir Ahmad,,,,,,,,

v. Emperor AIR 1936 PC 253: that if the statute mandates that something be done in a particular manner, should be in that manner or not at",,,,,,,,

all. In this case, since the original assessment was completed ""other than"" the eventualities contemplated in Section 151(1), i.e. it was",,,,,,,,

processed under Section 143(1). Thus, clearly Section 151(2) applied.",,,,,,,,

9. For the above reasons, the Court holds that there is no infirmity in the order of the ITAT. No substantial question of law arises. The",,,,,,,,

appeal is therefore dismissed.â??,,,,,,,,

19. Therefore, now the issue is squarely covered in favour of the assessee as for reopening of the assessment as sanction has been taken",,,,,,,,

from the learned CIT instead of joint CIT. Hence, respectfully following the decision of the honourable Delhi High Court, we hold that the",,,,,,,,

order passed by the learned assessing officer are not sustainable. In view of this all four appeals of the assessee are allowed accordingly.,,,,,,,,

20. As we already allowed the appeal of the assessee on the ground of incorrect sanction obtained by the learned assessing officer holding,,,,,,,,

that the order passed by the learned assessing officer for all these 4 years are not sustainable in law, consequently the appeals of the",,,,,,,,

learned assessing officer are also not sustainable. In view of this, all these 4 appeals of the learned assessing officer are dismissed.",,,,,,,,

21. Accordingly, appeals of the assessee are allowed and appeals of the learned AO are dismissed.â??",,,,,,,,

5. In the appeals, the Principal Commissioner of Income Tax has prayed for framing of the following common substantial questions of law:-",,,,,,,,

â??A. Whether the Hon'ble High Court is justified in law in quashing the notice issued u/s 148 on the ground that the satisfaction of the CIT,,,,,,,,

as against the satisfaction of the JCIT was recorded before issue of notice u/s 148 of the Act?,,,,,,,,

B. Whether the Hon'ble Tribunal is justified in ignoring that even before recording of the satisfaction by the CIT, the JCIT had also",,,,,,,,

recorded his satisfaction which is sufficient to comply with the requirement of section 151 for issue of notice u/s 148 of the IT Act in the,,,,,,,,

years involved?â??,,,,,,,,

6. Learned counsel for the appellant states that in the Assessment years, there was no requirement to obtain the consent of the Joint Commissioner as",,,,,,,,

the initial assessments had been done under Section 143(1) of the Income Tax Act, 1961 [for short â??the Actâ??] and the notices for Re-",,,,,,,,

assessments had been issued under Section 148 of the Act within a period of four years. He also states that sanctions had been obtained from the,,,,,,,,

Additional Commissioner of Income Tax in all the relevant Assessment years. He points out that the Additional Commissioner of Income Tax is of the,,,,,,,,

same rank as the sanctioning authority, namely, the Joint Commissioner of Income Tax, as mentioned in Section 151 of the Act.",,,,,,,,

7. However, we find that the argument advanced before us is contrary to the case set up by the appellant before the statutory Authorities below,",,,,,,,,

inasmuch as it was argued before the Commissioner, Income Tax (Appeals) as well as the Income Tax Appellate Authority that though sanction was",,,,,,,,

mandatory in the present cases, it had been granted by the Commissioner of Income Tax and not by the Joint Commissioner of Income Tax. It was",,,,,,,,

not urged before the statutory Authorities below that no sanction was required in the present cases as the initial assessments had been completed,,,,,,,,

under Section 143(1) of the Act and the notices for Re-assessments under

Section 148 had been issued within four years period.Â In fact, even in the",,,,,,,,

appeals filed before us, the following grounds have been agitated by the appellant:-",,,,,,,,

A. Because the Ld. IT AT has failed to consider the specific facts of the assessment year involved in the present appeal. The Ld. IT AT ought,,,,,,,,

to have considered that in this case, assessment order was passed u/s 143(3) of the Act and four years have not expired from the end of the",,,,,,,,

relevant assessment year i.e. A Y 2006-07 at the time of recording the reasons for initiating the proceedings u/s 148. As per the provisions,,,,,,,,

of Section 151 as applicable during the relevant period of time (upto 31.03.2015) the ACIT was competent to issue notice u/s 148 for A Y,,,,,,,,

2006-07 without any approval from higher authority. However, approval of the Ld. CIT was nevertheless taken before issue of notice u/s",,,,,,,,

148. Therefore, merely because the approval was erroneously taken from the CIT, the assessment order cannot be rendered invalid.",,,,,,,,

B. Because the Ld. ITAT has failed to consider that the approval or sanction for reopening of assessment was obtained from the,,,,,,,,

Commissioner of Income Tax as per Section 151 (2). However, in this case, since the approval was obtained from the Commissioner of",,,,,,,,

Income Tax, the Ld. IT AT has, overlooking the facts regarding the period from the end of the assessment year to the date of issue of notice,",,,,,,,,

assumed that approval for issue of sanction should have been obtained from the Joint Commissioner of Income Tax and therefore quashed,,,,,,,,

the assessment order relying upon the decision of the jurisdictional High Court in the case of CIT Vs. Soyuz Industrial Resources Ltd. 58,,,,,,,,

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D. Because the Ld. ITAT has failed to consider that in the present case, there was no lack of satisfaction or exercise of power by the Joint",,,,,,,,

Commissioner.,,,,,,,,

8. Since the foundational facts sought to be urged in the present appeals are diametrically opposite to the case set up by the appellant before this Court,,,,,,,,

and the statutory Authorities below, this Court is of the view that it is not a fit case where appeals should be entertained under Section 260A of the",,,,,,,,

Act. Moreover, if the facts now urged before this Court are true and correct, then the respondents should have brought the said facts to the notice of",,,,,,,,

the statutory Authorities below by filing appropriate applications.,,,,,,,,

9. Consequently, the present appeals along with pending applications are dismissed.",,,,,,,,

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.,,,,,,,,

