IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "F", MUMBAI

BEFORE SHRI N.V.VASUDEVAN(J.M) & SHRI R.K.PANDA (A.M)

ITA NO.1511/MUM/2010 (A.Y. 2005-06)

M/s. Vijay Corporation, 143 A-Wing, Mittal Court, 224, Nariman Point, Mumbai – 400 021. PAN: AACFV 6757B (Appellant)	Vs.	The Income Tax Officer 12(2)(1) Mumbai. (Respondent)

Appellant by	:	Shri Ashok J. Patil
Respondent by	:	Shri Shantam Bose
Date of hearing	:	16/01/2012
Date of pronouncement	:	20/01/2012

ORDER

PER N.V.VASUDEVAN, J.M:

This is an appeal by the assessee against the order dated 16/12/2009 of CIT(A)-23, Mumbai relating to A.Y 2005-06. Ground No.1 raised by the assessee reads as follows:

> "1. On the facts and circumstances of the case and in law the CIT (Commissioner of Income Tax) (A) erred in holding that the Assessment Order passed u/s. 143(3) dated 10.12.2007 was a valid order inspite of the same had not been signed by the assessing officer."

2. The assessee is a partnership firm engaged in the business of investment in shares, finance, commission etc. The assessee filed the return on income for A.Y 2005-06 on 30/10/2005. An order of assessment dated 10/12/2007 was passed by the AO. In the said order the AO determined the total income as follows:

[1]	**Business Income** –		
	As per assessee's statement	2,77,014	
	Add : Interest disallowed as in para 4 above	10,66,622	
	Expenses estimated on earning Dividend income	30,000	
	TDS on Society charges amounting To Rs.1225/- was not paid in time	1,225	13,74,861

The assessee field appeal before CIT(A) challenging aforesaid additions. Before CIT(A) the assessee raised a ground that the order of assessment is not valid in law for the reason that the AO did not sign the same. On this objection the CIT(A) called for a remand report from the AO. In the remand report the AO has stated as follows:

> " In this case, th assessment u/s. 143(3) of the I.T. Act was completed on 10.12.2007. The assessment order u/s. 143(3) of the I.T. Act, Income-tax Computation Form (ITNS 150), Demand Notice u/s. 156 of the IT. Act and Penalty Notice u/s.271(1)(c) of the I.T. Act were dispatched to the assessee viz. M/s. Vijay Corpo'ration on 18/12/2007 by Speed Post but was returned by the Postal Authorities on 27.12.2007 with the remark 'left' / 'closed'. As such, the same was served on the assessee by hand on 27.12.2007. The acknowledgement is on record. Also, at the time of assessment proceedings, the assessee/ representative has attended the hearing and discussed the case, which is evidenced from recording and signature of the assessee / representative on the Note Sheet.
>
> In this case, the assessee's only contention is that the assessment order is not signed. But the notice of demand, computation forms etc. attached along with the assessment order is signed and carries proper stamp and seal of the Assessing Officer. This makes it clear that the assessment was completed within the time barring date of 31.12.2007 itself. **The assessment order would have remained to be signed inadvertently** . In this matter, kind attention invited to the decision of Supreme Court in the case of Kalyankumar Ray Vs. Cominissioner of Income tax 191 ITR 634, wherein the Hon' ble Supreme Court has held that "The statute does not, in terms, require the service of the assessment order or the other form on the assessee and contemplates

only the service of a 'notice of demand..... It has also been held that I.T.N.S. 150 is also a form for determination of tax payable and when it is signed or initialed by the Income-tax Officer, it is certainly an order in writing by the Income-tax Officer, determining the tax payable, within the meaning of Section 143(3)."

In the present case, the assessee has not contended that the ITNS-150 despatched along with the assessment order was not signed. The said copy has been signed by the A.O. and can hence be treated as valid assessment order for A.Y2005-06, considering the above decision of the Hon'ble Supreme Court."

It can be seen from the remand report of the AO extracted above that the AO does not dispute the fact that the order of assessment was not signed. The CIT(A) dismissed the plea of the assessee holding as follows:

"2.4 I have considered the rival contentions. As mentioned by the Assessing Officer in his report, the Supreme Court judgement in Kalyankumar Ray Vs. CIT has held that the statute does not require the service of the assessment order and contemplates only the service of a notice of demand. It is not disputed that the notice of demand or for that matter computation in ITNS 150 was not signed or served on the appellant. 'Assessment' is one integrated process invoking not only the assessment of total income but also the determination of tax. The net sum payable and the demand notice issued are in accordance with the assessment made by the Assessing Officer. Since the tax has been determined and demand notice issued and served if the assessment order remained to be unsigned it is merely a procedural irregularity curable under the provisions of section 292B. It is the service of demand notice which is crucial; such failure would invalidate proceedings as held in Mohan Wahi & Ors vs. CIT 248 ITR 799. Conversely where there is proper service of demand notice, as in the case in the present appeal the assessment cannot be held invalid. The provisions of section 292B ensure that on technical ground the proceedings is not rendered invalid. As is evidenced from the Assessing Officer's report dated 26/08/2009, the assessment has been in substance and effect in conformity with and according to the intent and purposes of the I.T. Act. At the time of assessment proceedings, the assessee representative has attended the hearing and discussed

the case, which is evidenced from recording and signature of the Assessee/representative on the note sheet. In this case, the assessee's only contention is that the assessment order is not signed. But the notice of demand, computation form etc attached alongwith the assessment order signed and carried proper stamp and seal of the AO. This makes it clear that the assessment was completed within the time barring date of 31.12.2007 itself. Since the order sent by speed post was returned by the postal authorities the same was served on the assessee by hand on 27.12.2007. The acknowledgement is on record. As such omission in signing the order cannot invalidate the order and the irregularities are curable in terms of the provisions of section 292B of the Act.

It may be pointed out that the appellant filed appeal based on the assessment order on 16/01/2008 within the time allowed for filing appeal without raising any objection regarding the order, indicating his acquiescence to the said order. It is only at a much Later date viz. 25/02/2009 that the appellant as an after thought raised this additional ground. Nevertheless, as held above, the defect in the assessment order is curable u/s. 292B of the I.T. Act. The additional ground is therefore without merit."

3. Before us ld. Counsel for the assessee relied on the decision of the Hon'ble Supreme Court in the same Smt. Kilasho Devi Burman & Others vs. CIT,219 ITR 214 (SC). The facts of the case before the Hon'ble Supreme Court were that an assessment was said to have been made on a Hindu undivided family for the assessment year 1955-56. The assessment order on the record of the Revenue bore no signature. According to the assessee, neither the statutory notices, nor the demand notice, nor the assessment order had been received. On the record there was an acknowledgment slip bearing the date April 25, 1958, signed by P. According to the assessee, there was no such person who had any authority to receive any notice on his behalf. There was no material to show that the demand raised in the demand notice had been paid by the assessee. The assessee filed a partition suit. For the assessment years 1956-57 to 1961-62, no notices were issued to the Hindu undivided family. The income from the properties which were covered

by the partition suit was returned by, and assessed in the hands of the erstwhile members of the Hindu undivided family. The Income-tax Officer thereafter took proceedings under section 147(a) of the Income-tax Act, 1961, and concluded that the assessee's Hindu undivided family had escaped assessment. The Tribunal went into the question as to whether there was an assessment on the Hindu undivided family for the assessment year 1955-56. Its conclusions were: (i) that there was no signed assessment order; (ii) that even if a demand notice was taken to exist in this case, the assessment was invalid as, in spite of there being a positive demand thereunder, it had not been served on the assessee; (iii) that if there was no assessment on the Hindu undivided family (for 1955-56), there was no need on the part of the assessee to come forward with an application under section 25A of the Indian Income-tax Act, 1922, as that section contemplated an application being made thereunder only when there was already an assessment on the Hindu undivided family. The Tribunal held that the assessment in the status of a Hindu undivided family when the family had ceased to exist had to be set aside as it was not valid. On a reference, the High Court held that the findings of the Tribunal were perverse as the records showed that P had received a number of notices on behalf of the assessee on various dates. It held that there was a valid assessment on the Hindu undivided family for 1955-56. On appeal to the Supreme Court held that the High Court had not given due importance to the fact that upon the record produced by the Revenue before the Tribunal there was no signed assessment order nor a signed assessment form. A valid assessment upon the Hindu undivided family for the assessment year 1955-56 was central to the case of the Revenue. Since it was unable to establish, by the production of a signed assessment order for that year, that there was such a valid assessment, its case fell and the Tribunal was right in its conclusions. The High Court was in error in concluding that the findings of

the Tribunal on the records were perverse. The judgment and order of the Tribunal were valid. There was no valid assessment on the Hindu undivided family for the assessment year 1955-56.

4. The ld. D.R however, submitted that the issue in the case of Smt. Kilasho Devi Burman & Others(supra) was as to whether there was proper service of notice and the decision has to be read in that context. The ld. Counsel for the assessee also placed reliance on the decision of the Gujarat High Court in the case of CWT vs. Dhansukhlal J. Gajab, 237 ITR 534 (Guj), wherein assessment was held to be invalid on the ground that the AO not being signed it. The ld. D.R submitted that, that was a case where neither the assessment order nor the computation sheet were signed by the AO, whereas in the present case computation sheet was admittedly signed by the AO.

5. We have considered the rival submissions. Admittedly the order of assessment was not signed by the Assessing Officer. The revenue authorities relied on the decision of the Hon'ble Supreme Court in the case of Kalyankumar Ray (supra) in coming to the conclusion that absence of a signed order of assessment is not fatal. We find that the Hon'ble Supreme Court in the case of Smt. Kilasho Devi Burman & Others (supra) had considered its decision in the case of Kalyankumar Ray (supra) and has observed as follows:

> "The High Court based itself upon the demand notice and the acknowledgment slip signed by Phool Singh and observed, "Unless an assessment order was passed under or in pursuance of the Act question of a notice of demand in the prescribed form specifying the sum payable by the assessee could not arise". **The High Court did not give due importance to the fact that upon the record produced by the Revenue before the Tribunal there was no signed assessment order nor a signed assessment form.**

That an assessment order has to be signed is established by the judgment of this court in Kalyankumar Ray v. CIT [1991] 191 ITR 634. It said (page 638) :

> "If, therefore, the Income-tax Officer first draws up an order assessing the total income and indicating the adjustments to be made, directs the office to compute the tax payable on that basis and then approves of it, either immediately or some time later, no fault can be found with the process, though it is only when both the computation sheets are signed or initialled by the Income-tax Officer that the process described in section 143(3) will be complete. . . . All these decisions emphasise that all that is needed is that there must be some writing initialled or signed by the Income-tax Officer before the period of limitation prescribed for completion of the assessment has expired in which the tax payable is determined and not that the form usually styled as the 'assessment order' should itself contain the computation of tax as well."

A valid assessment upon the Hindu undivided family for the assessment year 1955-56 was central to the case of the Revenue. Since it was unable to establish, by the production of a signed assessment order for that year, that there was such a valid assessment, its case fell and the Tribunal was right in so holding. The High Court was in error in concluding that the findings of the Tribunal on the record were perverse.

6. The Hon'ble Supreme Court in the case of Smt.Kilasho Devi Burman (supra) did not give any importance to the service of notice of demand duly signed but emphasized the requirement of the law that an order of assessment had to be signed for its validity. The revenue authorities have in the present case proceeded on the footing that the requirement of law is complied with when a signed notice of demand exists or is served on an Assessee. In our view the question in the case before the Hon'ble Supreme Court in the case of Kalyankumar Ray (supra) was the absence of a tax calculation in the order of assessment. The order of assessment duly signed existed. The present case is a case where there was no signed order of

assessment. We are of the view that the decision in the case of Smt.Kilasho Devi Burman (supra) squarely covers the issue in favour of the Assessee. In the absence of a signed order of assessment, we have to hold that assessment is invalid. We are also of the view that the provisions of Sec.292B cannot come to the rescue of the revenue. The provisions of Sec.292B reads as follows:

> "292B. Return of income, etc., not to be invalid on certain grounds.-- No return of income, assessment, notice, summons or other proceeding furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of income, assessment, notice, summons or other proceeding if such return of income, assessment, notice, summons or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Provisions of Sec.143(3) of the Act contemplates that the AO shall pass an order of assessment in writing. The requirement of signature of the AO is therefore a legal requirement. The omission to sign the order of assessmenet cannot be explained by relying on the provisions of Sec.292B of the Act. Tax computation is a ministerial act as observed by the Hon'ble Supreme Court in the case of Kalyankumar Ray (supra) and can be done by the office of the AO if there are indications given in the order of assessment. But the notice of demand signed **by the office of the AO** without the existence of a duly signed order of assessment by the AO, in our view cannot be said to be a omission which was sought to be covered by the provisions of Sec.292B of the Act. If such a course is permitted to be followed than that would amount to delegation of powers conferred on the AO by the Act. Delegation of powers of the AO u/s.143(3) of the Act is not the intent and purpose of the Act. An unsigned order of assessment cannot be said to be in substance and effect in conformity with or according to the intent and purpose of the Act.

7. We therefore hold that the order of assessment is invalid. The appeal of the Assessee is accepted on this ground. The other issues raised by the Assessee are therefore not taken up for consideration.

Order pronounced in the open court on the 20th day of Jan. 2012.

Sd/- Sd/-

(R.K.PANDA) (N.V.VASUDEVAN)
ACCOUNTANT MEMBER JUDICIAL MEMBER

Mumbai, Dated. 20th Jan.2012

Copy to: 1. The Appellant 2. The Respondent 3. The CIT City –concerned
4. The CIT(A)- concerned 5. The D.R"F" Bench.

(True copy) By Order

Asst. Registrar, ITAT, Mumbai Benches
MUMBAI.

Vm.

	Details	Date	Initials	Designation
1	Draft dictated on	16/1/2012		Sr.PS/PS
2	Draft Placed before author	17/1/2012		Sr.PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS/PS
7.	File sent to the Bench Clerk			Sr.PS/PS
8	Date on which the file goes to the Head clerk			
9	Date of Dispatch of order			