

## **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**ITA No.184/2009**

**SHRI RAJESH KUMAR .....Appellant, Through: Mr.Anil Sharma, Adv.**

**Versus**

**CIT, CENTRAL 3, NEW DELHI ..... Respondent, Through: Mr. Sanjeev Sabharwal, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE VIKRAMAJIT SEN**

**HON'BLE MR. JUSTICE V.K. SHALI**

**O R D E R**

**09.04.2009**

This Appeal preferred under Section 260A of the Income Tax Act, 1961( Act for short) by the Assessee challenges the consolidated Order dated 30.6.2008 of the learned ITAT in the cross appeal filed by the Appellant and the Revenue in IT(SS) No.10/Del/2007 and IT(SS) No.17/Del/2007. Vide this Order, the learned Appellate Tribunal has held that the assessment completed was within the period of limitation and in light of the Judgment of the Hon'ble Supreme Court in the case of Sahara India(Firms) vs- CIT, [2008] 300 ITR399.

The contention on behalf of the Appellant is that in his own case, that is, Rajesh Kumar vs- CIT, [2006] 287 ITR 91, the Apex Court had ruled in his favour, that opportunity of hearing has to be granted to the Assessee before proceeding under Section 142(2A). Thus, according to the Petitioner, the impugned assessment framed under Section 158BC of IT Act by the Assessing Officer is barred by limitation within the meaning of the provisions contained in Section 158BE read with Section 142(2A) of the Act.

The learned counsel for the Respondent has supported the Order of the learned Appellate Tribunal placing reliance on the Judgment of Sahara India (Films). The Hon'ble Apex Court in that case upheld the Judgment in Rajesh Kumar but held that although the Orders in question were vitiated by failure to observe the principle of audi alteram partem, its ruling on question of law would apply proportionately and that it would not be open for the Appellant to raise the question of limitation before the Appellate Authority. The relevant excerpts of the Judgment of Sahara India(Firms) are as under:-

There is no denying the fact that the law on the subject was in a flux in the sense that till the judgment in Rajesh Kumar was rendered, there was divergence of opinion amongst various High Courts. Additionally, even after the said judgment, another two-judge Bench of this court had expressed reservation about its correctness. Having regard to all these peculiar circumstances and the fact that on December 14, 2006, this court had declined to stay the assessment proceedings, we are of the opinion that this court should be loathe to quash the impugned orders. Accordingly, we hold that the law on the subject, clarified by us, will apply prospectively and it will not be open to the appellants to urge before the appellate authority that the extended period of limitation under Explanation 1(iii) to section 153(3) of the Act was not available to the Assessing Officer because of an invalid order under section

142(2A) of the Act. However, it will be open to the appellants to question before the appellate authority, if so advised, the correctness of the material gathered on the basis of the audit report submitted under sub-section (2A) of section 142 of the Act. The case of the Appellant is covered by the above stated observations made by the Larger Bench in Sahara India(Firms). The decision of the learned Appellate Tribunal based on Sahara India(Firms) is held to be valid.

No substantial question of law arises for our consideration.

Dismissed.

**VIKRAMAJIT SEN, J.**

**V.K. SHALI, J.**

**APRIL 09, 2009**