

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Income Tax Appeal No. 814 of 2010
Date of decision: 13.7.2011

Commissioner of Income Tax, Hisar

--- Appellant

Versus

Ram Narain Bansal

--- Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Krishan Kumar Mehta, Standing Counsel
for the appellant-revenue.

AJAY KUMAR MITTAL, J.

This appeal under Section 260A of the Income-Tax Act, 1961 (for short "the Act") has been filed by the revenue against the order dated 21.4.2009, passed by the Income Tax Appellate Tribunal Delhi Bench 'G', Delhi (in short "the Tribunal") in ITA No. 584 (Del) 2009, relating to the assessment year 2002-03.

2. The following substantial question of law has been claimed for determination of this Court:

"Whether on the facts and circumstances of the case, the ITAT was right in law in concurring with the finding of CIT (A) in holding the assessment bad in law, made pursuant to the issue of notice u/s 148 without appreciating that no

prejudice was caused to the assessee by non-issuance of notice u/s 143(2), particularly, when the assessee was participating in the assessment proceeding without objecting to the assessment proceedings on this account at the assessment stage?”

3. The facts, in brief, necessary for adjudication as narrated in the appeal, are that on being transpired that the assessee had made deposits aggregating Rs. 21,54,32,000/- in the account of different benami/bogus concerns and source of the same could not be explained, proceedings under Section 147 of the Act were initiated against it on 13.3.2007. In response to said notice, reply dated 24.4.2007 was submitted wherein the assessee had stated that he had already filed the return on 1.12.2003 for the assessment year 2002-03. The assessee participated in the assessment proceedings on various dates. The re-assessment was finally completed by the assessing officer at a total income of Rs. 1,57,70,910/- vide order dated 31.12.2007 passed under Section 143 (3) /148 of the Act.

4. The Commissioner of Income-tax (Appeals) {in short “the CIT(A)”}, in the appeal filed by the assessee annulled the re-assessment vide order dated 28.11.2008 holding that the re-assessment framed by the assessing officer was void and bad in law as no notice under Section 143(2) of the Act was issued and served upon the assessee.

5. The appeal carried by the revenue before the Tribunal was dismissed vide the order under appeal.

6. No one has chosen to appear on behalf of the assessee in spite of service.

7. We have heard learned counsel for the appellant and have perused the record.

8. The solitary question that arises for consideration by this Court is, whether in the facts and circumstances non-issuance of notice under Section 143(2) of the Act would render the proceedings for re-assessment null and void?

9. Learned counsel for the Revenue submitted that notice under Section 148 of the Act was issued to the assessee which was duly served. In pursuance to the said notice, the assessee appeared before the assessing authority and participated in the re-assessment proceedings on 30.11.2007, 6.12.2007, 12.12.2007, 13.12.2007, 18.12.2007, 24.12.2007, 27.12.2007, 28.12.2007 and 31.12.2007 and also cross-examined the witnesses who were summoned and their statements were recorded. The counsel drew support from a judgment of the Kerala High Court in **K.J. Thomas vs. CIT** (2008) 301 ITR 301 to submit that non-service of notice under Section 143 (2) of the Act was not fatal to re-assessment proceedings. Reference was made to Section 292BB of the Act and according to the counsel the said provisions were applicable to all pending proceedings. Reliance was also placed on a judgment of this Court in **Commissioner of Income Tax, Bathinda v. M/s Panchvati Motors (P) Ltd. (ITA 292 of 2008)** decided on 3.5.2011.

10. We find considerable force in the submission of the learned counsel. The Kerala High Court in **K.J.Thomas's** case (supra), while considering similar issue, had held as under:

“The procedure under S. 143(2) of the Act is to ensure that an adverse order is issued only after proper

opportunity is given to the assessee. In this case, it is conceded that the assessee got opportunity to file reply and detailed reply was in fact filed and reassessment notice and final order were also issued within the time-limit prescribed under the Act.”

11. Further, this Court in **M/s Panchwati Motor (P) Ltd.’s** case (supra) while examining the scope of Section 292BB of the Act and its applicability had noted as under:

“Section **292BB** of the Act was inserted by Finance Act, 2008 w.e.f. 1.4.2008. It reads thus:-

“**292BB**: Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of the Act, which is required to be served upon him, has been duly served upon him in time in accordance with the provisions of this Act and such assessee shall be precluded from taking any objection in any proceeding or inquiry under this Act that the notice was –

- a) not served upon him; or
- b) not served upon him in time; or
- c) served upon him in an improper manner.

Provided that nothing contained in this section shall apply where the assessee has raised such objection before the completion of such assessment or reassessment.”

A presumption has been raised under the said provision relating to service of notice upon the assessee in respect of assessment or reassessment proceedings.

According to this provision, where an assessee appears in any proceedings or cooperates in any enquiry relating to assessment or reassessment proceedings, it shall be presumed that the assessee has been validly served and it shall not be open to the assessee to object that the notice was not served upon him or was not served in time or was served upon him in an improper manner. However, an exception to the aforesaid presumption has been made in a case where such objection has been raised before completion of assessment or reassessment. The provision has been made effective from 1.4.2008 and therefore, shall apply to all pending proceedings. The Central Board of Direct Taxes issued circular No.1 of 2009 dated 27th March, 2009 (2009) 310 ITR (St.) 42 giving explanatory notes on the provisions relating to direct taxes contained in Finance Act, 2008. Clause 42.7 (at page 86 of the report) is relevant which relates to applicability of this provision and reads thus:

“42.7 **Applicability** – This amendment has been made applicable with effect from 1st April, 2008. This means that the provision of new-section 292BB shall apply in all proceedings which are pending on 1st April, 2008.”

12. It is not disputed that the assessee had appeared before the assessing officer on various dates and participated in the re-assessment proceedings before the finalization and no objection regarding issuance and service of notice under Section 143(2) of the Act was raised before the assessing officer. The CIT(A) and the

Tribunal were, thus, in error in nullifying the re-assessment proceedings and declaring the re-assessment order to be invalid.

13. In view of the above, the substantial question of law is answered in favour of the Revenue and against the assessee. Consequently, the matter is remanded to the Tribunal for decision afresh on merits in accordance with law.

(AJAY KUMAR MITTAL)
JUDGE

(ADARSH KUMAR GOEL)
ACTING CHIEF JUSTICE

July 13, 2011
rkmalik