

In case of change of AO, newly appointed AO shall continue proceeding from the stage where they were left by earlier AO

The Hon'ble Supreme Court ("the Supreme Court") in the case of *Dy. Commissioner of Income Tax New Delhi v. M/s Mastech Technologies Pvt. Ltd. (Civil Appeal No. No. 8077 OF 2022) dated November 03, 2022* held that in case of transfer of Assessing Officer ("AO"), the new AO can only continue the proceeding from the stage at which earlier AO had left.

Facts:

M/s Mastech Technologies Pvt. Ltd. ("the Respondent") filed return of income for Assessment Year 2008-09 declaring loss. On March 23, 2015, the AO issued notice ("First Notice") for reassessment under Section 148 of the Income Tax Act, 1961 ("the Income Tax Act"). However, due to transfer of the AO, the case was assigned to the new AO. Subsequently, the new AO again issued notice ("Second Notice") under Section 148 of the Income Tax Act dated January 18, 2016. The Respondent submitted its objection against re-opening the assessment vide letter dated March 07, 2016. However, the AO rejected the objection of the Respondent and vide Order dated on March 30, 2016 ("the Order"), passed an Order directing the Respondent to deposit additional tax under Section 143(3) of the Income Tax Act.

The Respondent filed writ petition being *Mastech Technologies Pvt. Ltd. Dy Commissioner of Income Tax (W.P(C) No. 2858 of 2016)*, before the Hon'ble Delhi High Court ("the High Court"), challenging the Order. The Delhi High Court vide judgement and order dated July 13, 2017 ("the High Court Order") quashed the re-opening of the assessment and also set aside the assessment order passed by the AO for the Assessment Year 2008-09 on the ground that issuance of the Second Notice under Section 148 would result into dropping of the First Notice. Consequently, the Second Notice issued by the AO dated January 18, 2016 would be considered as fresh notice which was barred by limitation. Further, no reasons were recorded

when the Second Notice was issued as to whether the Second Notice was issued in continuation of the First Notice.

Aggrieved with the order passed by the Delhi High Court, the Department (“**the Appellant**”) filed ***Civil Appeal No. 8077 of 2022*** before the Supreme Court contending that order of quashing the assessment passed by the High Court was not correct.

Issue:

Whether in case where an AO is transferred and new AO takes charge, a fresh Notice is required to be issued or new AO can continue the proceedings from the stage where earlier AO left?

Held:

The Supreme Court held that:

- Section 129 of the Income Tax Act permits to continue the earlier proceeding in case of change of the AO from the stage at which the proceeding were before the earlier AO.
- The Second Notice issued by the AO was not required by law. However, the Second Notice could not be said to drop the First Notice.
- The reason to re-open the assessment was already furnished after the First Notice. Further, it was to be noted that assessment order was passed on the basis of First Notice and not on the basis of the Second Notice.
- Therefore, the Supreme Court held that the Delhi High Court Order of quashing and setting aside the re-opening of the assessment is unsustainable.

Relevant Provisions

Section 129 of the Income Tax Act:

129. Whenever in respect of any proceeding under this Act an income- tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises jurisdiction, the income-tax authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.

(Author can be reached at info@a2ztaxcorp.com)

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