

In the High Court for the States of Punjab and Haryana at  
Chandigarh

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ITA No.10 of 2008

Date of decision:31.3.2008

The Commissioner of Income Tax ,Faridabad

Appellant

Versus

M.P.Singh

.. Respondent

Coram: **Hon'ble Mr.Justice Satish Kumar Mittal**  
**Hon'ble Mr.Justice Rakesh Kumar Garg**

Present: Mr.Yogesh Putney, Advocate  
for the Revenue/appellant.

Rakesh Kumar Garg,J

1. The Revenue has filed the present Appeal under Section 260A of the Income Tax Act, 1961(for short 'the Act') against the order dated 5.4.2007 passed by the Income Tax Appellate Tribunal, Delhi Bench 'I' New Delhi (for short 'the Tribunal'), in ITA No.316/DEL/2005 for the Assessment Year 1999-2000 raising the following proposed substantial questions of law: -

“a)Whether on the facts and in the circumstances of the case , the Hon'ble ITAT was right in law in holding that issue of notice u/s 148 was invalid and that the assessment so framed lacks jurisdiction ?

b) Whether on the facts and in the circumstances of the case , the Hon'ble ITAT was right in law in holding that

the Assessing Officer was not right in issue of notice u/s 148 without framing the assessment in response to the earlier notice issued u/s 142(1) of the Income Tax Act on 23.2.2000, though no valid return was filed by the assessee in response to notice dated 23.2.2000 and the return filed by the assessee on 18.10.2001 was treated as invalid return and was filed.”

The assessee did not furnish his return of income voluntarily. The Assessing Officer issued notice under section 142(1) of the Act on 23.2.2000 calling upon him to furnish the return of the income. The assessee did not file any return up to 31.3.2001, i.e., the date up to which the assessee could file the said return. The assessee filed his return of income on 18.10.2001 declaring income of Rs.5,56,580/-. Since the said return filed by the assessee was treated as invalid return, the Assessing Officer issued notice under section 148 of the Act on 21.11.2002 after recording reasons. Assessment under section 143(3)/147 of the Act was completed on 26.3.2004 at an income of Rs.26,04,210/-.

Aggrieved against this order of assessment, the assessee filed an appeal before Commissioner of Income Tax (Appeals) on the ground that since proceedings under Section 142(1) of the Act had been initiated by the Assessing Officer vide notice dated 23.2.2000 and in response to the said notice, return of income had been duly filed by the appellant, therefore, there was nothing in law which could support the action of the Assessing Officer to issue notice under Section 147 of the Income Tax Act as there was no

case for the Assessing Officer to hold that the income had escaped assessment. Before the Commissioner of Income Tax(Appeals), the following undisputed facts emerged in the case:-

- “a)That proceedings u/s 142 (1) had indeed been initiated by the Assessing Officer for the assessment year 1999-2000 vide notice dated 23.2.2000 and this fact is no more in dispute .
- b) That no assessment order was at all framed to conclude the proceedings initiated u/s 142(1).
- c) That the AO did not have any information on record regarding the initiation of proceedings u/s 142(1) prior to this fact having brought on record by the appellant.
- d) That there was no escapement of income once the return had been duly filed.
- e) And for once return having so filed in response to the proceedings pending u/s 142(1), the question of initiating action u/s 147 read with Section 148 could not arise.”

In view of these undisputed facts, the Commissioner of Income Tax(Appeals) held that the notice under section 148 of the Act was a invalid notice and the assessment so framed under section 143(2) lacks jurisdiction. The assessment was therefore, quashed by the Commissioner of Income Tax (Appeals).

Not satisfied with the order of the Commissioner of Income Tax (Appeals), the revenue filed the appeal before the Tribunal.

After hearing the rival submissions, the Tribunal gave a

categoric finding of fact to the effect that the Assessing Officer initiated proceedings under Section 142 vide notice 23.2.2000 and no assessment order was framed at all to conclude the proceedings initiated under section 142(1) of the Act and therefore, notice under Section 148 of the Act was invalid. On the basis of this categoric conclusion on facts reached by the Tribunal by relying upon the judgment of Delhi High Court in the case of KLM Royal Dutch Airlines Vs. ADIT (2007) 159 Taxman 191(Del) and also the decision of the Mumbai Bench of the Tribunal in the case of Income Tax Officer Vs. Capt. A.P. Kamat (ITA Nos.1084 to 1087 and 1089 to 1090(Mumbai)/2003, held that since the machinery of re-assessment was already set in motion by issuance of earlier notice and re-assessment was not completed for whatever reasons, the stand of the Assessing Officer cannot be accepted as the notice under section 148 of the Act was invalid notice and the assessment so framed under section 143 (2) lacks jurisdiction. The appeal of the Revenue was dismissed.

Feeling aggrieved against the said order of the Tribunal, the revenue has filed the present appeal in this Court.

Shri Yogesh Putney, Advocate, learned counsel for the Revenue has vehemently argued that the assessee did not file any return of income in response to notice dated 23.2.2000 issued under section 142(1) of the Act by 31.3.2001 and the return filed by the assessee on 18.10.2001 was not a valid return and therefore, the said return was treated as invalid return by the Assessing Officer and on the basis of the details and information on record, the Assessing Officer has reason to believe that assessee's income for

the year under consideration had escaped assessment and therefore, a valid notice under section 148 of the Act was issued to the assessee on 21.11.2002 after recording reasons in writing.

We have heard learned counsel for the appellant. However, we find no merit in the arguments raised by the counsel for the Revenue. Undisputedly, the proceedings under section 142(1) of the Act had been initiated by the Assessing Officer for the assessment year 1999-2000 vide notice dated 23.2.2000 but no assessment order was at all framed to conclude these proceedings initiated under section 142(1) of the Act. The Assessing Officer did not have any information on record regarding the initiation of proceedings under Section 142(1) of the Act, prior to this fact having been brought on record by the assessee and there was no escapement of income once the return had been filed.

In view of the above undisputed facts, the question of initiating action under Section 147 read with Section 148 of the Act could not arise as the machinery of re-assessment was already set in motion by issuance of earlier notice and if re-assessment is not completed for whatever reasons, it could not be revived by issuing fresh notice as the time for completing re-assessment in pursuance of earlier notice had already expired. The Tribunal also held that no specific defect has been pin pointed by the revenue for the conclusions arrived at by the Commissioner of Income Tax(Appeals).

Hence, no substantial question of law is arising from the impugned order passed by the Tribunal for the determination of this Court. Thus the appeal is hereby dismissed.

(RAKESH KUMAR GARG)  
JUDGE

March 31, 2008  
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(SATISH KUMAR MITTAL)  
JUDGE