



* **HIGH COURT OF DELHI : NEW DELHI**

+ **ITA No.729 of 2007**

Judgment reserved on: January 28, 2008

% Judgment delivered on: February 22, 2008

Commissioner of Income Tax
Delhi-I, New Delhi. ...Appellant

Through Mrs. P.L. Bansal with
Mr.Vishnu Sharma, Advs.

Versus

Bhan Textile (P) Limited
G-12, South Extension, New Delhi. ...Respondent

Through Mr. K.R. Manjani, Adv.

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE S.L. BHAYANA

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |



MADAN B. LOKUR, J.

The Revenue is aggrieved by an order dated 22nd December, 2006 passed by the Income Tax Appellate Tribunal, Delhi Bench 'A' in ITA No. 2892/D/2004 relevant for the Assessment Year 1996-97.

2. The assessment in respect of the Assessee was completed under Section 144 of the Income Tax Act, 1961 (for short the Act) on 31st March, 1999.

3. Feeling aggrieved by the assessment order, the Assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT (A)] who passed an order dated 12th May, 2000, the operative portion of which is important and that reads as follows: -

“It was also the case of the Id. Counsel that the additions were made without any basis and there was no history of case which could justify such an assessment I have considered this argument also. It is true that there is no history of case in respect of the additions made in the assessment order. At least nothing is mentioned in the order in this respect. It is also felt that the Ld. AO could have specifically granted one more opportunity to the appellant to state his case in respect of the matters covered in the questionnaire. This is so because the appellant could have thought that the proceedings may be dropped after hearing the preliminary objection. Though it is mentioned in the note that the AR did not agree to file any detail. Yet the AO could have granted one more opportunity, particularly when the matter had remained pending up to 31.3.1999. It is also seen that the assessment



was taken up on 5.3.99, while the initial notice had been issued on 27.11.97 and there was no follow up of the case in the interregnum. In view of this, I am of the view that the ld. AO should have granted one more opportunity to the appellant on proposed additions. Therefore, it is held that it will be the interest of the justice to restore the matter to the file of the AO, so that one more opportunity may be given to the appellant to file evidence and state his case in respect of matters covered in show cause dated 5.3.99. Thereafter, the Ld. AO may pass order u/s 144 taking the explanation into account. Therefore, this matter is restored to the file the AO. Thus, ground no. 2 of the appeal is treated as allowed.”

4. When the matter was taken up by the Assessing Officer pursuant to the above order, he issued a notice to the Assessee under Section 143(2) of the Act on 24th February, 2003 for making a fresh assessment. According to the Assessee, the notice was barred by limitation in view of the provisions of Section 153(2A) of the Act.

5. Since the Assessee apparently did not cooperate with the Assessing Officer, the assessment, as originally framed, was once again made by the Assessing Officer.

6. Against the assessment order, the Assessee preferred an appeal before the CIT (A) who concluded that the provisions of Section 153(2A) of the Act were not applicable but the case was covered by Section 153(3)(ii) of the Act and as such there was no time limit fixed



for making the assessment.

7. Feeling aggrieved by the order passed by the CIT (A), the Assessee preferred an appeal before the Tribunal. The appeal was allowed by the order under challenge and it was held by the Tribunal that the provisions of Section 153(2A) of the Act were applicable and not Section 153(3)(ii) of the Act.

8. For facility of appreciating the controversy involved, Section 153(2A) of the Act and Section 153(3)(ii) of the Act are reproduced below:

“153. Time limit for completion of assessments and reassessments.

(1) xxx xxx xxx

(2) xxx xxx xxx

(2A) Notwithstanding anything contained in sub-sections (1), (1A), (1B) and (2), in relation to the assessment year commencing on the 1st day of April, 1971, and any subsequent assessment year, an order of fresh assessment in pursuance of an order under Section 250 or section 254 or section 263 or section 264, setting aside or cancelling an assessment, may be made at any time before the expiry of one year from the end of the financial year in which the order under section 250 or section 254 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 263 or section 264 is passed by the Chief Commissioner or Commissioner:

Provided



Provided further

3. The provisions of sub-sections (1), (1A), (1B) and (2) shall not apply to the following classes of reassessments, reassessments and recomputations which may, subject to the provisions of sub-section (2A), be completed at any time –

- (i) xxx xxx xxx
- (ii) where the assessment, reassessment or recomputation is made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 250, 254, 260, 262, 263, or 264 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act.”

9. It was contended by learned counsel for the Revenue that the order passed by the CIT (A) did not set aside the assessment order and, therefore, the provisions of Section 153(2A) would not be applicable. We are not at all in agreement with learned counsel for the Revenue.

10. The operative words in Section 153(2A) of the Act are “an order setting aside or cancelling an assessment”. We have reproduced the operative portion of the order passed by the CIT (A) and although that portion does not specifically say that the order of the Assessing Officer has been set aside or cancelled, but since ground



No.2 of the appeal filed by the Assessee was allowed, by necessary implication, the assessment order was set aside to that extent.

11. The CIT (A) had made it clear in his order that the Assessing Officer “should have granted one more opportunity to the Appellant on proposed additions” and in view thereof, it was held that it would be in the interest of justice to restore the matter to the file of the Assessing Officer so that one more opportunity could be given to the Assessee to file its evidence and state its case in respect of the show cause notice issued to it. The CIT (A) also directed the Assessing Officer to pass an order under Section 144 of the Act after taking the explanation of the Assessee into account. This, in our opinion, clearly means that the assessment order to the extent that it did not give an opportunity to the Assessee to place its evidence on record was set aside or cancelled by the CIT (A) although these specific words were not used in the appellate order.

12. This being the position, in our opinion, Section 153(2A) of the Act is clearly applicable.

13. In so far as the applicability of Section 153(3)(ii) of the Act is concerned, that relates to giving effect to a finding or direction, inter alia, by the CIT (A). What this means is that the Assessing Officer must



comply with the finding or direction given by the appellate authority without necessarily disturbing the assessment order. In so far as the present case is concerned, that is not the position because the Assessing Officer was directed by the CIT (A) to pass a fresh order under Section 144 of the Act meaning thereby that the assessment order to the extent that it is covered by ground No.2 of the appeal filed by the Assessee was set aside or cancelled. There was no independent finding or direction which the Assessing Officer was required to comply with on the basis that the core of the assessment order has been sustained by the CIT (A).

14. Under the circumstances, we are of the view that no substantial question of law arises for consideration.

15. The appeal is dismissed.

MADAN B. LOKUR, J

FEBRUARY 22, 2008
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S.L. BHAYANA, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.