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% 18.11.2009

Present: Dr. Rakesh Gupta with Ms. Poonam Ahuja and Ms. Rani Kiyala
for the appellant.
Ms. Rashmi Chopra for the respondent.

+ ITA No. 1085/2009

After issuing notice under Section 148 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') in respect of the assessment year 1997-98, reassessment order was passed on 2.3.2005 by the AO. This order was challenged by the appellant herein by filing appeal before the CIT(A).

In this appeal, the appellant raised number of legal issues and also raised certain jurisdictional issues, on the basis of which the appellant submitted that notice under Section 148 of the Act and the proceedings initiated pursuant thereto were bad in law. The CIT(A) allowed the appeal of the assessee on merits, namely, it was only a change of opinion on the part of the AO while issuing notice under Section 148 of the Act and, therefore, reassessment proceedings could not have been initiated. Since the appeal was allowed on this ground, the CIT(A) did not go into and decide other legal and jurisdictional issues raised by the appellant.

The respondent filed appeal against the order of the CIT(A) before the Income Tax Appellate Tribunal (for short, the 'Tribunal'). The



assessee in the said appeal filed cross objections raising same jurisd issues which were raised before the CIT(A), but not decided. The Tribunal decided the appeal of the Revenue vide orders dated 27.6.2008. It went into the question of change of opinion, on the basis of which the appeal of the appellant herein was allowed by the CIT(A). Further, discussing this aspect in detail, the Tribunal came to the conclusion that the matter needed fresh consideration by the CIT(A) on this aspect and, thus, remitted the case back to the CIT(A) for fresh consideration. While doing so, the Tribunal also categorically pointed out that the jurisdictional and legal issues raised by the appellant in the cross-objections shall also be considered by the CIT(A).

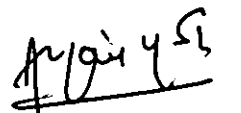
The appellant did not challenge the order of the Tribunal. Instead, a miscellaneous application under Section 254(2) of the Act was filed on 17.3.2009 pointing out that various jurisdictional issues raised by the appellant were not considered and the Tribunal should have adjudicated upon those issues. This application of the appellant is dismissed vide orders dated 15.5.2009 and challenging this order, the present appeal is filed.

From the factual matrix taken note of above, it is clear that even the CIT(A) had not dealt with and taken one or the other view on



these jurisdictional issues raised by the appellant, since the appeal was allowed on another ground, namely, it was a case of change of opinion. Primarily, the Tribunal was concerned with this aspect in the appeal preferred by the Revenue. When the Tribunal formed the opinion that the matter on this aspect needed reconsideration, in a case like this, the approach of the Tribunal by remitting the case back and directing the CIT(A) to decide the jurisdictional issues raised by the appellant in the first instance cannot be faulted with. We state at the cost of repetition that the order passed in appeal on 27.6.2008 was not challenged by the appellant. Since jurisdictional issues were not decided by the CIT(A) also, it was in the fitness of things that such issues should be considered and adjudicated upon by the CIT(A) in the first instance.

Thus, we do not find any error in the order dated 15.5.2009 passed by the Tribunal and, accordingly, dismiss this appeal.


A.K. SIKRI, J.


SIDDHARTH MRIDUL, J.

November 18, 2009
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