



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

{ITA No.1135 of 2009}

&

{ITA No.1148 of 2009}

Judgment delivered on:07.09.2010

(1) ITA No.1135 of 2009

COMMISSIONER OF INCOME TAX . . . APPELLANT

Through: Ms. Rashmi Chopra, Advocate

VERSUS

BHUSHAN KUMAR . . .RESPONDENT

Through: Mr. Satyen Sethi, Advocate

(2) ITA No.1148 of 2009

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CORAM:-

**THE HON'BLE MR. JUSTICE A.K. SIKRI
THE HON'BLE MS. JUSTICE REVA KHETRAPAL**

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J. (oral)

1. These two appeals pertain to the assessment years 1994-95 and 1995-96. In respect of both these assessment years, the Assessing Officer has issued notice under Section 148 of the Act and reopened the reassessment proceedings after receiving the report of



The Income Tax Appellate Tribunal vide impugned judgment (whereby appeals of both the years have been decided) held that the issuance of notice under Section 148 of the Act were not valid. In this behalf, we find from the orders of the Tribunal that it is recorded that the original assessment under Section 143 (3) was completed on 18th March, 1997 and reference was made to the DVO on 27th March, 1998. Thus, according to the Tribunal since this reference was made to the DVO after the completion of the assessment, this was not permissible. However, these are the dates which pertain to the assessment year 1994-05 only. In so far as assessment year 1995-96 is concerned, it is stated by the learned counsel for the respondent assessee that assessment was completed only on 25th March, 1998 whereas reference to DVO was made before that i.e. 27th March, 1998. It is clear therefrom that on the aforesaid premise, the notice under Section 148 of the Act in respect of assessment year 1994-05 only could be set aside.

2. Thus, in so far as ITA 1148/2009 is concerned, which pertains to the assessment year 1994-95 is hereby dismissed.

3. As far as ITA 1135/2009 for the assessment year 1995-06 is concerned, since there is a factual error and Tribunal has not considered that assessment year was completed on 25th March, 1998 and matter was referred before that on 27th January, 1998, discussion contained in the last sub paragraph of para 7 qua this assessment year would not be valid. The observation of the Tribunal that in view of this judgment of the Jurisdictional Court in **Bawa Abhai Singh vs. Deputy Commissioner of Income Tax**, 253 ITR 83 is



aside the order of the Tribunal so far as it relates to the assessment year 1995-06 is concerned.

4. We may state that we have not otherwise arrived at any finding as to whether judgment in ***Bawa Abhai Singh*** (supra) would be applicable or not. However, it is also necessary to record that learned counsel for the revenue had also argued that the observations of the Tribunal in para 7.9 wherein the Tribunal has observed that the assessee produced the requisite details asked for by the Assessing Officer at the time of assessment is also not correct as in the 'reasons to believe' it is specifically recorded that during the course of assessment proceedings the assessee justified the investment but the correct and complete details of investment were not filed. We only observe that this is again a matter to be argued before the Tribunal and the Tribunal shall apply its independent mind while dealing with this appeal afresh. ITA 1135/2009 is disposed of in aforesaid terms.

**(A.K. SIKRI)
JUDGE**

**(REVA KHETRAPAL)
JUDGE**

SEPTEMBER 7, 2010
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