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

Date of decision: 31st July, 2014

\+ **Income Tax Appeal 179/2012**

COMMISSIONER OF INCOME TAX ..... Appellant
Through Mr. Kamal Sawhney, Sr. Standing Counsel.

versus

PP ENGINEERING WORK ..... Respondent
Through Mr. Mr. Ved Jain and Mr. Pranjal Shrivastava, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J. (ORAL)

By order dated 27th September, 2012, the following substantial question of law was framed in this appeal by the Revenue which pertains to assessment year 2000-01:-

> "Did the Tribunal fall into error in holding that the AO lacked jurisdiction to reopen the assessment for the purpose of making addition of Rs.32 lakhs, overlooking Section 150 of the Income Tax Act?"

2. The appeal relates to addition of Rs.32 lakhs under Section 68 of the Income Tax Act, 1961 (Act, in short), which the respondent-assessee had claimed that they had received from Jaconde Overseas Pvt. Ltd. The addition was initially made in the assessment year 2001-

02, but the Tribunal allowed the appeal filed by the respondent assessee vide order dated 11th September, 2008 recording the following findings:-

> "8. On going through this provision it is clear that this section 68 essentially contains a deeming provision which applies **if any sum found credited in the books of an assessee maintained for a previous year** may be charged to income tax as the income of the assessee of that previous year, if -
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> (i) the assessee offers no explanation about the nature and source of such sum, or
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> (ii) the explanation offered by the assessee is, in the opinion of the. Assessing Officer with regard to the entries recorded in the books of account is found not genuine.
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> It further means that only those entries found credited in the books of an assessee maintained for a previous year can be charged to income tax as the income of the assessee of that previous year. Thus, for making this addition under section 68 of the Act, the Revenue is required to satisfactorily show that the sum found credited in the books of account of the assessee related to the previous year relevant to assessment year under consideration. Whereas in the instant case undisputedly the impugned sum of Rs.32 lakh was found credited in the books of the assessee in the financial year 1999-2000 relevant to assessment year 2000-01 and not to the financial year 2000-01 relevant to assessment year 2001-02 under consideration before us. Hence, we are of the opinion that for the sum of Rs. 32 lakh found credited in the books of account of the assessee in the financial year 1999-2000, the addition cannot be made in the hands of the assessee in the assessment year 2001-02 under consideration before us even if the explanation given by the *assessee* is found unsatisfactory by the Assessing

Officer.

> 9. For the reasons stated above, we are of the opinion that the impugned addition of Rs. 32 lakh made by the Assessing Officer under section 68 of the Act for assessment year 2001-02 under consideration before us cannot be sustained and so the orders of the tax authorities below in this regard are set-aside and additional ground of appeal taken by the assessee is allowed.

3. In view of the aforesaid order, that the credit entries related to earlier assessment year 2000-01, the Assessing Officer initiated proceedings by issue of notice under Section 147/148 of the Act for the said year and passed an order dated 29th December, 2009, making addition of Rs.32 lakhs. The respondent-assessee, however, succeeded before the Commissioner of Income Tax (Appeals), who held that the notice under Section 147/148 for the assessment year 2000-01 was belatedly issued on 12th February, 2009, after a lapse of 7 years and, therefore, was beyond the time limit prescribed under Section 149 of the Act.

4. Aggrieved, appellant-Revenue preferred an appeal before the Tribunal relying upon Section 153 of the Act. It is noticeable that the Commissioner of Income Tax (Appeals) did not refer to Section 150 (2) and Section 153, Explanation 2 of the Act. The Tribunal also without referring to the two provisions, held that the assessment order could not be sustained, as the Tribunal had not given any finding or

direction in the earlier order dated 11th August, 2008 relating to t assessment year 2000-01.

5. Explanation 2 and 3 to Section 153 reads as under:-

> *Explanation 2.*—Where, by an order referred to in clause (*ii*) of sub-section (3), any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.
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> *Explanation 3.*—Where, by an order preferred to in clause (*ii*) of sub-section (3), any income is excluded from the total income of one person and held to be the income of another person, then, an assessment of such income on such other person shall, for the purposes of section 150 and this section, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order, provided such other person was given an opportunity of being heard before the said order was passed."

6. Section 150(2), which prescribes limitation period for issue of notice under Section 148 of the Act, reads as under:-

> "Section 150 - Provision for cases where assessment is in pursuance of an order on appeal, etc.
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> x x x x x
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> (2) The provisions of sub-section (1) shall not apply in any case where any such assessment, reassessment or recomputation as is referred to in that sub-section relates to an assessment year in respect of which an assessment, reassessment or recomputation could not have been made at the time

> the order which was the subject-matter of the appeal, reference or revision, as the case may be, was made by reason of any other provision limiting the time within which any action for assessment, reassessment or recomputation may be taken.

7. Delhi High Court in ***Rural Electrification Corporation Ltd. Vs. Commissioner of Income Tax and Anr.***, [2013] 355 ITR 345 (Delhi) had occasion to consider the effect of Explanation 3 and whether the ratio as expounded by the Supreme Court in ***ITO Vs. Muralidhar Bhagwan Das***, [1964] 52 ITR 355 (SC) would be still applicable. The legislative history including purpose behind enactment of sub-section (2) to Section 150 and Explanations 2 and 3 to Section 150 of the Act were referred to. Reference was also made to sub-section (3), clause (ii) of Section 153 of the Act and thereafter it was opined:-

> "12. When the Income Tax Act, 1961 was enacted, Section 153 did not contain the Explanations 2 and 3. Those explanations were introduced subsequently in 1964 after the Supreme Court decision in ***Murlidhar Bhagwan Das*** *(supra).* It is therefore, apparent that the two explanations were added so as to supersede the view taken by the Supreme Court in respect of the 1922 Act. Explanation 2 in Section 153 makes it clear that even where any income is excluded from the total income of the assessee from a particular assessment year, then an assessment of such income for another assessment year shall, for the purpose of Section 150 as also of Section 153, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order. In other words, a finding in respect of a different year can also be used for the purposes of invoking the provisions

> of Section 150 of the said Act, by virtue of the deeming provision contained in Explanation 2 in Section 153 of the said Act. This would otherwise not have been available in view of the decision of the Supreme Court in ***Murlidhar Bhagwan Das*** *(Supra).* Similarly, Explanation 3 stipulates that where, by an order inter-alia passed by the Tribunal in an appeal, any income is excluded from the total income of one person and held to be the income of another person, then, assessment of such income on such other person shall, for the purposes of Section 150 as also Section 153, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order…"

8. In Rural Electrification Corporation Ltd. (supra), Explanation (3) to Section 153 was applicable and in this case, Explanation 2 to Section 153 would be applicable, and the ratio and reasoning given in Rural Electrification Corporation Ltd. (supra) would apply with equal force. Explanation 2 to Section 153 applies when income is found to be relating to some other year and Explanation 3 applies when income is found to be income of some other person. Otherwise, the two explanations are identical and serve the same purpose.

9. Similar view has been taken by Gujarat High Court in ***Kalyan Ala Barot Vs. M.H. Rathod***, [2010] 328 ITR 521 (Guj), wherein effect of the two explanations read with sub-section (2) to Section 150 were considered and it was held:-

"13. On a plain reading of sub-section (3) of section 153 of the Act, it is apparent that the same lifts the bar of limitation laid down under sub-section (1) and subsection (2) thereof in respect of the classes of assessments, reassessments or recomputations enumerated thereunder. Thus, in the light of the provisions of section 153(3)(ii) the normal time limit for completion of assessments or reassessments, as contained in section 153(1) or section 153(2), shall have no application where the assessment 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 sections 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 the Act.

14. The language employed in Explanation 2 to section 153 makes it abundantly clear that under the said provision, when an order in appeal, revision or reference is made whereby any income is excluded from the total income of an assessee for an assessment year, then an assessment of such income for another assessment year shall be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order for the purpose of section 150 or section 153. Thus, for the purpose of resorting to the exception provided under sub-section (3)(ii), it is not necessary that there should be any specific finding or direction contained in the said order with regard to assessment of income for another assessment year in light of the deeming provision in Explanation 2 below section 153 of the Act. The very fact that income has been excluded from the total income of the assessee for an assessment year by virtue of an order referred to in clause (ii) of sub-section (3) would be sufficient for the purpose of making an assessment of such income in another year and for the purpose of section 150 and section 153, the same would be deemed to have been made in consequence of or to give effect to any finding or direction contained in the said order.

15. x x x x

16. x x x x

17. x x x x

18. Another contention raised on behalf of the petitioner is that a finding in terms of section 150 of the Act can only be that which is necessary for the disposal of an appeal in respect of an assessment of a particular year. The expressions "finding" as well as "direction" can be only in the context of a finding necessary for giving relief in the assessment of the year under consideration. That an order made in relation to a particular assessment year cannot be made the basis for reopening the concluded assessment of an earlier assessment year. However, the said contention loses sight of Explanation 2 below section 153 which provides that where, by an order referred to in clause (ii) of sub-section (3), where any income is excluded from the total income of the assessee for an assessment year, then, an assessment of such income for another assessment year shall, for the purposes of section 150 and section 153, be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order.

19. On a combined reading of sub-section (1) of section 150 and sub-section (3) of section 153, it is apparent that in cases falling under clause (ii) of sub-section (3) of section 153 read with Explanation 2 thereunder, the provisions of subsection (1) of section 150 would be applicable and the bar of limitation under section 149 would not be applicable. While section 150(1) and section 153(3) contemplate issuance of notice under section 148 and completion of assessment, reassessment and recomputation respectively, in consequence of or to give effect to any finding or direction contained in an order passed by any authority in any proceeding under the Act by way of appeal, reference or revision, Explanation 2 to section 153(3) contains a deeming provision which provides that where by an order referred to in

> clause (ii) of sub-section (3) any income is excluded from the total income of an assessee for an assessment year, then an assessment of such income for another assessment year shall for the purposes of section 150 and section 153 be deemed to be one made in consequence of or to give effect to any finding or direction contained in the said order."

10. In these circumstances, the question of law mentioned above has to be answered in favour of the appellant Revenue and against the respondent assessee. It is accordingly answered.

11. At this stage, learned counsel for the respondent assessee submits that several grounds were raised before the first appellate authority i.e. Commissioner of Income Tax (Appeals), but he did not give any finding in respect of other grounds in view of the findings recorded by him on applicability of Section 153, which we have held are legally untenable. As noted, Commissioner of Income Tax (Appeals) in his order dated 22nd October, 2010 has held that the assessment order passed under Section 143 (3) read with Section 147 dated 29th December, 2009 was void *ab initio* and, therefore, he had not examined the other pleas and grounds of the respondent assessee. As we have held that the finding of the Commissioner Income Tax (Appeals) and the Tribunal on the question of limitation is legally untenable and incorrect, the appeal filed by the respondent-assessee before the Commissioner of Income Tax (Appeals) on other grounds should be examined and decided.

12. The respondent assessee will appear before the concern Commissioner of Income Tax (Appeals) on 3rd September, 2014, when a date of hearing will be fixed.

The appeal is disposed of. No costs.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

JULY 31, 2014
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