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

*Decided on 27th February, 2015*

\+ ITA 158/2015

COMMISSIONER OF INCOME TAX-8 (ERSTWHILE CIT-III)

..... Appellant

Through Ms. Suruchi Aggarwal, sr. standing counsel

versus

SOYUZ INDUSTRIAL RESOURCES LTD. ..... Respondent

Through Mr. Mayank Jain and Mr. Madhur Jain, Advs.

**CORAM:**
**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**
**HON'BLE MR. JUSTICE R.K.GAUBA**

**MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)**

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1. The Revenue is aggrieved by the order of the Income Tax Appellate Tribunal (hereinafter referred to as "the ITAT") dated 22.08.2014 dismissing its appeal ITA No. 3853/Del/2010. It urges that in the given circumstances of the case, the ITAT's findings that the Commissioner of Income Tax lacked the authority to sanction re-assessment proceedings through issuance of notice under Section 148, was unjustified.

*2.* The brief facts of the case are that for Assessment Year (AY) 2002-03, the assessee had filed its returns in a normal course on 16.10.2002. The assessment was framed under Section 143(1). Based upon information received by the Assessing Officer (AO), a satisfaction note was recorded sometime in early 2009 and a notice was issued in 2009 i.e. four years beyond the end of the assessment year, under proviso to Section 147(1). The re-assessment proceedings were completed on 31.12.2009. The assessee in its appeal urged that the notice under Section 147 was unsustainable for the reason it was not

approved by the competent authority in accordance with Section 151 of the Act. This argument ultimately found favour with the ITAT which, *inter alia*, held as follows:-

> *"8. We have heard rival submission and perused the material on record. In the instant case admittedly, neither assessment u/s 143 (3) nor u/s 147 was completed prior to issuance of notice u/s 148 of the Act. The notice u/s 148 of the Act was issued on 25.3.2009 i.e. four years beyond the end of the assessment year. Therefore u/s 151 (2) of the Act is applicable to the facts of instant case Section 151(2) of the Act read as under :*
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> > *"(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice."*
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> *8.1. Hence the sanctioning authority as per section 151(2) of the Act for issuance of notice u/s 148 ought to have been the Joint Commissioner of Income Tax. However on perusal of the assessment records which was placed before us, it is clear that the sanction for issuance of notice u/s 148 was granted by the Commissioner of Income Tax. A copy of the reason recorded for reopening the assessment is placed at page 26 of the paper book filed by the assessee on 7.9.2010. The Ld. DR's contention is that assessee did not raise any objection before the AO on this issue. The contention of the Ld. DR is that once the assessee submits to the jurisdiction to the AO then subsequently objection with reference to jurisdiction cannot be raised. The sanction by competent authority, as mentioned in section 151 only can assign proper jurisdiction to the Assessing Officer and if such sanction was not obtained, the Assessing Officer lacked the jurisdiction to complete the reassessment proceedings. When the legislature has specifically assigned jurisdiction to a particular authority under the Act to grant sanction then, if all other conditions are fulfilled, the sanction has to be granted by that very authority. This*

*function cannot be delegated to any other authority. It is the legal duty cast upon that authority to perform the said function. If that authority fails in performing his legal functions and the same is performed by the other authority then it goes to the very root of proper assumption or jurisdiction by the authority which was required to take that sanction. This is a purely legal issue and can be raised at any stage of proceeding."*

3. During the course of the contentions, the Revenue had argued that even otherwise Section 292B of the Act precluded the assessee's objection as to the jurisdictional infirmity of the notice. This was repelled by the ITAT itself. It relied upon a Division Bench ruling in *Commissioner of Income Tax V. S.P.L's Siddhartha Ltd.* (2012) 345 ITR 223.

4. The Revenue contends that the ITAT fell into error and relies upon the proviso to Section 151(1) to say that in all cases where re-assessment is proposed, the approval of the highest authorities such as the Principal Chief Commissioner, Principal Commissioner or the Commissioner, is essential and that in the facts of this case such authorization had, in fact, been secured prior to issuance of notice.

5. Section 151 reads as follows:-

*"151. Sanction for issue of notice.- (1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice :*

*Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the Chief Commissioner or Commissioner is satisfied,*

*on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.*

*(2) In a case other than a case falling under sub-section (1), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of Joint Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Joint Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.*

6. A plain textual analysis of the above provisions would indicate the following:-

(i) Where the original assessment is a result of scrutiny assessment [Section 143(3)] or made in the course of re-assessment proceedings (Section 147) – but within the initial period, Section 151(1) applies. The competent authority would then be the Joint Commissioner;

(ii) In the same fact situation, in case the notice is sought to be issued under Section 147 and the proviso to Section 147(1) i.e. beyond the extended four-year period, the competent authority for prior approval to the proposal would be the Principal Chief Commissioner, or Chief Commissioner or Principal Commissioner or Commissioner;

(iii) In case the original assessment is completed "other than" i.e. otherwise than under Section 143(3) or during the course of re-assessment proceedings, competent authority would be the Joint Commissioner.

7. The ITAT examined the applicability of Section 292B based upon the decision in *S.P.L's Siddhartha Ltd.*(supra), which rejected the revenue's contention about its application holding that where a jurisdictional infirmity

strikes at the root, invalidating the issuance of notice, Section 292B cannot rescue it.

8. The Revenue's argument seems plausible and even logical because the Commissioner or a Chief Commissioner is unarguably ranked higher in authority than a Joint Commissioner. Yet at the same time, this Court has to give effect to plain words of the statute which unambiguously states that the competent authority in such cases is the Joint Commissioner (and not the Chief Commissioner or the Principal Commissioner). The Revenue's submissions that all such cases, are covered under proviso to Section 147(1), the competent authority for prior approval would be four superior officers, renders Section 151(2) superfluous. If anything the Court is clear that it is not its job to render, in the process of interpretation, an entire provision academic or inoperative. This court is of the opinion that accepting the Revenue's position would result in that consequence. The Court also invokes the principle enunciated by the Privy Council *in Nazir Ahmad V. Emperor*, AIR 1936 PC 253 : AIR 193 that if the statute mandates that something be done in a particular manner, it should be in that manner or not at all. In this case, since the original assessment was completed "other than" the eventualities contemplated in Section 151(1), i.e. it was processed under Section 143(1). Thus, clearly Section 151(2) applied.

9. For the above reasons, the Court holds that there is no infirmity in the order of the ITAT. No substantial question of law arises. The appeal is therefore dismissed.

**S. RAVINDRA BHAT, J**

**R.K.GAUBA, J**

**FEBRUARY 27, 2015/**vld