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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
17.

\+ **ITA 92/2012**

CIT ..... Appellant
Through: Mr. P. Roy Chaudhuri, Senior Standing counsel.

versus

SANJAY KUMAR GARG ..... Respondent
Through: Mr. Ved Jain with Mr. Pranjal Srivastava, Advocates.

WITH

18.
\+ **ITA 93/2012**

CIT ..... Appellant
Through: Mr. P. Roy Chaudhuri, Senior Standing counsel.

versus

SANJAY KUMAR GARG ..... Respondent
Through: Mr. Ved Jain with Mr. Pranjal Srivastava, Advocates.

WITH

19.
\+ **ITA 94/2012**

CIT ..... Appellant
Through: Mr. P. Roy Chaudhuri, Senior Standing counsel.

versus

SANJAY KUMAR GARG ..... Respondent
Through: Mr. Ved Jain with Mr. Pranjal Srivastava, Advocates.

AND

20.
+ **ITA 96/2012**

CIT ..... Appellant
Through: Mr. P. Roy Chaudhuri, Senior Standing counsel.

versus

SANJAY KUMAR GARG ..... Respondent
Through: Mr. Ved Jain with Mr. Pranjal Srivastava, Advocates.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R
% **02.09.2015**

1. These four appeals by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') are against the common order dated 28th January 2010 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.3532/Del/2009 for the Assessment Year ('AY') 2003-04, ITA No. 3533/Del/2009 for AY 2004-05, ITA No. 1502/Del/2009 for AY 2001-02 and ITA No. 3531/Del/2009 for AY 2002-03.

2. By the order dated 28th July 2014, this Court framed the following two substantial questions of law for determination:

> "1. Whether the Income Tax Appellate Tribunal ('ITAT') was right in nullifying the assessment orders on the ground that they were barred by limitation?
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> 2. Whether the order of the Tribunal is perverse as the Assessee had never accepted service of notice under Section 147/148 of the Income Tax Act, 1961 dated 23.09.2005 and had claimed that the said notice was never served or received by him?"

3. The facts in brief are that the Assessee was engaged in the business of commission agent of food grains under the name and style of M/s. Rahul Enterprises as its proprietor. The Assessee filed its regular returns of income for AY 2000-01 to 2004-05 as under:

"

Assessment Year	Date of filing return	income
2000-01	30/10/2000	Rs. 1,41,300/-
2001-02	22/10/2001	Rs. 1,45,603/-
2002-03	28/10/2002	Rs.1,67,378/-
2003-04	06/11/2003	Rs.1,97,590/-
2004-05	01/11/2004	Rs.1,11,910/-"

4. A survey under Section 133A of the Act was conducted by the Director of Investigation, New Delhi on 12th July 2004 and the statement of the

Assessee was recorded. Certain documents in the form of loose papers found during the search were also impounded. On the basis of the information so gathered, the Deputy Commissioner of Income Tax, Central Circle initiated re-assessment proceedings under Section 147 of the Act by issuing notice on 23rd September 2005 by speed post. The notice which was so issued was not returned undelivered to the Department.

5. In response to the notice issued on 23rd September 2005 the authorised representative of the Assessee appeared before the Assessing Officer ('AO') on 16th March 2006 along with a *vakalatnama* and a letter requesting the AO to furnish photostat copies of the documents impounded at the time of the search. The case was adjourned to 20th March 2006. On 4th April 2006, a photocopy machine was arranged for making copies of the impounded documents. By a letter dated 18th April 2006, the AO informed the Assessee through his counsel of the date of hearing fixed for AYs 2001-02 to 2005-06 on 24th April 2006. In this letter it was mentioned that enough adjournments had already been granted and that the assessment proceedings for the AYs upto 2004-05 are going to be barred by limitation that year itself.

6. The counsel for the Assessee, however, pleaded that he did not have enough time to prepare for the case hearing and sought 15 more days' time. By the letter dated 26th April 2006, the AO adjourned the date of hearing to 5th May 2006. Summons was also issued on 26th April 2006 under Section 131 of the Act requiring the Assessee to produce the complete books of accounts and documents related to his business for the AYs 2001-02 and 2005-06. By a letter dated 3rd May 2006, the counsel for the Assessee sought another 20 days' time to complete the preparation of books of accounts on the basis of the seized material.

7. A notice under Section 142(1) of the Act along with a questionnaire dated 21st September 2006 for the aforementioned AYs were issued and served at the same address on Smt. Geeta Garg, the wife of the Assessee. At the same address at which speed post notice was issued i.e. D-16/406, Sector-7, Rohini, notice under Section 143 (2) was issued on 31st October 2006 by the Income Tax Officer. The said notice was to inform the Assessee of the hearing of the date being fixed for 10th November 2006 at 12 noon. This notice was served on the Assessee by the Inspector on 6th November 2006. On the reverse of the said notice, the Assessee made an endorsement in Hindi to the effect that till that date he had not received any earlier notice.

He also filed an affidavit on 10th November 2006 denying that he had received any notice prior to 6th November 2006.

8. On the basis of the above noting and affidavit the AO issued yet another notice under Section 148 of the Act on 24th November 2006 for AYs 2001-02 to 2004-05. The reasons for re-opening, as recorded in the notice, were identical to the reasons recorded on 22nd September 2005. The fresh notices were served on the Assessee on 5th December 2006 for the said four AYs. The assessment was completed on 24th December 2007 under Section 143(3)/147 of the Act.

9. The contention of the Assessee which has been accepted by the ITAT is that when the re-assessment proceedings pursuant to the notices issued on 21st September 2005 were still pending and had not been completed by 31st December 2006 as was required by law, it was legally impermissible that fresh notices under Section 148 of the Act could be issued to the Assessee. The ITAT has after examining a large number of decisions of the High Court and the Supreme Court come to the conclusion that the issuing of fresh notices under Section 148 of the Act for AYs 2001-02 to 2004-05 was

impermissible in law. The assessments for the said AYs were annulled as being barred by limitation.

10. The legal position appears to be fairly well settled. In ***S. B. Jain, Income Tax Officer, Nagpur v. Mahendra [1972] 83 ITR 104 (SC)*** a notice was issued a notice has been issued to the Assessee on 5th January 1962 under Section 34(1)(a) of the Income Tax Act, 1922 seeking to reopen the assessment for AY 1946-47. While the said proceedings were pending, the Income Tax Act, 1961 came into force with effect from 1st April 1962. The challenge by the Assessee to the validity of the notice issued under the 1922 Act succeeded with the Bombay High Court quashing the said notice by the order dated 6th March 1963. Thereafter the Income Tax Officer issued a fresh notice on 26th March 1963 under Section 148 of the Act in respect of the very assessment which had sought to be reopened by the earlier notice under Section 34(1)(a) of the 1922 Act. The Supreme Court held that the proceedings initiated under Section 34 (1)(a) of the 1922 Act were pending at the time when the 1961 Act came into force and, therefore, the Income Tax Officer was not competent to issue a fresh notice under Section 148 of the Income Tax Act, 1961.

11. In ***Nilofer Hameed v. Income Tax Officer [1999] 235 ITR 161 (Ker)*** after referring to a number of judgments of the High Courts, it was held by the Kerala High Court that "if an assessment is pending either by way of original assessment or by way of reassessment proceedings, the Assessing Officer cannot issue a notice under Section 148 but if no proceedings are pending either by way of original assessment or by way of reassessment, he can issue a notice under Section 148 within the time mentioned."

12. In the present case, the time limit for completing the reassessment proceedings pursuant to the notice issued on 23rd September 2005 was 31st December 2006. As is evident from the narration hereinabove, the reassessment proceedings were in progress and were being adjourned from time to time. Without those proceedings having come to an end a fresh reassessment could not have been initiated by the AO by issuing a notice under Section 148 of the Act on 24th November 2006. The proceedings initiated by the notice dated 23rd September 2005 ought to have been completed within the time stipulated and till such time there was no occasion to initiate fresh reassessment proceedings by issuing notice under Section 148 of the Act.

13. Consequently, the impugned order of the ITAT annulling the assessments for AY 2001-02 to 2004-05 cannot be said to be erroneous.

14. The questions framed are, therefore, answered in favour of the Assessee and against the Revenue. In other words, Question (1) is answered in the affirmative and Question (2) in the negative. The appeals are dismissed.

S. MURALIDHAR, J

VIBHU BAKHRU, J

SEPTEMBER 02, 2015
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