

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA No.836 of 2011**
% Decision Delivered On: 14th September, 2011

COMMISSIONER OF INCOME TAX . . . APPELLANT

Through: Mr. Sanjeev Rajpal, Sr.
Standing Counsel.

VERSUS

SPL'S SIDDHARTHA LTD. . . .RESPONDENT

Through: Dr. Rakesh Gupta, Advocate
with Mr. Ashwani Taneja,
Advocate, Ms. Rani Kiyala
and Mr. Kunal Nagpal,
Advocates.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SIDDHARTHA MRIDUL

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. The notice issued by the AO under Section 147 read with Section 148 of the Income Tax Act (hereinafter referred to as 'the Act') for reopening the assessment for the Assessment Year 2002-03 has been set aside by the Income Tax Appellate Tribunal ('the Tribunal' for brevity) on the

ground that the requisite approval of Additional Commissioner of Income Tax, which is mandatorily required, was not taken. Income tax return in this case was filed on 26.9.2002 at the loss of ₹27.63 lacs. The same was processed under Section 143(1) on 26.2.2003. Thereafter, notice under Section 147 read with Section 148 of the Act for reassessment was issued on 12.3.2009. This was much after the expiry of four years from the end of the relevant assessment year. The basis for issuance of the notice was that the inquiries conducted by Investment Wing of the Department had revealed that Mr. Dipak Gupta was indulging in providing the accommodation entries and he had admitted that he had taken cash from various parties and given them Demand Drafts/Cheques by charging commission. DDs/Cheques then were introduced as share capital or loan in their books of accounts. On that basis, it was alleged that insofar as the assessee is concerned, three bogus parties had given accommodation entries for a total sum of ₹5 lacs. Since four years had elapsed, the AO was required to take approval of the Competent Authority under Section 151 (1) of the Act. This provision reads as under:

Section 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 Deputy 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."

2. As per the aforesaid provision, it is only Joint Commissioner or Additional Commissioner, which can grant the approval. The argument of the assessee before the Tribunal was that the approval was not granted by the Joint Commissioner. Instead, it was taken from the CIT, Delhi-III, New Delhi, who was not competent to approve even when he was a higher Authority inasmuch as Section 151 of the Act specifically mentions Joint Commissioner as the Competent Authority. This contention of the respondent-assessee has

been accepted by the Tribunal thereby quashing the assessment proceedings. The contention of the Revenue that it was merely an irregularity committed by the AO and was rectifiable under Section 292B of the Act, has not been found convincing by the Tribunal.

3. During the course of the argument, learned counsel for the appellant submitted that the matter was routed through the Additional Commissioner of Income Tax and therefore, it should be treated that the Additional Commissioner of Income Tax had granted the requisite sanction. In order to verify the contention, we had called the records. From the records, we find that the Notings dated 12.3.2009 was prepared by the AO after recording his reasons, insofar as seeking approval is concerned. Relevant portion of the Note is as under:

"Since 4 years have been elapsed, the assessment record is being submitted for kind perusal and approval of the Commissioner of Income tax, Delhi-III, New Delhi according to section 151(1) of the IT Act, 1961 for issuance of notice u/s 148 of the I.T. Act.

Sd/-
(D.D. YADAV)
Asstt. Commissioner of Income tax
Circle 9(1), New Delhi.

Addl. CIT, Range – 9, New Delhi

CIT may kindly accord sanction.

CIT-III, Delhi

Sd/-
12.03.09”

4. The aforesaid noting in the file does not reflect what learned counsel for the Revenue argued. In the first instance, it would be seen that the AO had specifically sought the approval of the Commissioner only. Therefore, it cannot be said that the Joint Commissioner/Additional Commissioner had granted the approval. Further, no doubt, the file was routed through Additional Commissioner. However, he also, in turn forwarded the same to the Commissioner by giving the following endorsement:

“CIT may kindly accord sanction.”

5. It is clear that the Additional CIT did not apply his mind or gave any sanction. Instead, he requested Commissioner to accord the approval. It, thus, cannot be said that it is an irregularity curable under Section 292B of the Act.
6. It is relevant to point out that sub-Section (1) and sub-Section 2 of Section 151 of the Act are two independent provisions. The definition of Joint Commissioner is contained in Section 2(28C) and the definition of Commissioner given in Section 2(16), which are as under:

"Joint Commissioner means a person appointed to be a Joint Commissioner of Income Tax or an Additional Commissioner of Income Tax under sub-Section (1) of Section 117.

"Commissioner" means a person appointed to be a Commissioner of Income Tax under sub-Section(1) of Section 117."

7. Section 116 of the Act also defines the Income Tax Authorities as different and distinct Authorities. Such different and distinct authorities have to exercise their powers in accordance with law as per the powers given to them in specified circumstances. If powers conferred on a particular authority are arrogated by other authority without mandate of law, it will create chaos in the administration of law and hierarchy of administration will mean nothing. Satisfaction of one authority cannot be substituted by the satisfaction of the other authority. It is trite that when a statute requires, a thing to be done in a certain manner, it shall be done in that manner alone and the Court would not expect its being done in some other manner. It was so held in the following decisions:

- (i) ***CIT Vs. Naveen Khanna*** (dated 18.11.2009 in ITA No.21/2009 (DHC).

(ii) **State of Bihar Vs. J.A.C. Saldanna & Ors.** AIR (1980) SC 326.

(iii) **State of Gujarat Vs. Shantilal Mangaldas**, AIR (1969) SCN 634.

8. Thus, if authority is given expressly by affirmative words upon a defined condition, the expression of that condition excludes the doing of the Act authorised under other circumstances than those as defined. It is also established principle of law that if a particular authority has been designated to record his/her satisfaction on any particular issue, then it is that authority alone who should apply his/her independent mind to record his/her satisfaction and further mandatory condition is that the satisfaction recorded should be "independent" and not "borrowed" or "dictated" satisfaction. Law in this regard is now well-settled. In **Sheo Narain Jaiswal & Ors. Vs. ITO**, 176 ITR 35 (Pat.), it was held:

"Where the Assessing Officer does not himself exercise his jurisdiction under Section 147 but merely acts at the behest of any superior authority, it must be held that assumption of jurisdiction was bad for non-satisfaction of the condition precedent."

5. The Apex Court in the case of **Anirudh Sinhji Karan Sinhji Jadeja Vs. State of Gujarat**, (1995) 5 SCC 302 has held

that if a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If discretion is exercised under the direction or in compliance with some higher authorities instruction, then it will be a case of failure to exercise discretion altogether.

6. We are, therefore, of the opinion that the Tribunal has rightly decided the legal aspect, keeping in view well-established principles of law laid down in catena of judgments including that of the Supreme Court.
7. No question of law arises. This appeal is accordingly dismissed.

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

**(SIDDHARTHA MRIDUL)
JUDGE**

SEPTEMBER 14, 2011

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