

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 904 OF 2016

The Commissioner of Income Tax- Central-4 .. Appellant.
v/s.
Aquatic Remedies Pvt. Ltd., .. Respondent.

Mr. Tejveer Singh, for the Appellant.
Mr. F. V. Irani i/b. Mr. A. K. Jasani, for the Respondent.

**CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE,JJ.**
DATE : 25th JULY, 2018.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 25th March, 2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 25th March, 2015 is in respect of Assessment Year 2004-05.

2 Revenue urges the following question of law, for our consideration:

“ Whether on the facts and in the circumstance of the case and in law, the Tribunal was correct in quashing the order made under Section 143(3) r.w.s. 147 holding that the same is out of jurisdiction without appreciating the fact that the sanction of the CIT was based on the satisfaction/ report of the Addl. CIT and as such the requirement of section 151(2) of the IT Act which calls for the sanction of the Addl. CIT, is duly fulfilled?”

3 Respondent is engaged in the business of trading in pharmaceutical products. On 25th March, 2011, the Assessing Officer issued a notice under Section 148 of the Act, seeking to re-open the assessment for the Assessment Year 2004-05. Respondent challenged the issuance of the re-opening notice dated 25th March, 2011 on the ground that, permission/ sanction for issuing of the notice had to be obtained from the Additional Commissioner of Income Tax under Section 151 (2) of the Act while the sanction in this case has been obtained from the Commissioner of Income Tax. Thus, in breach of the Section 151 of the Act. Therefore, without jurisdiction. The Assessing Officer did not accept the above submission of the Respondent and proceeded to pass a reassessment order dated 16th December, 2011 under Section 143(3) read with Section 147 of the Act.

4 Being aggrieved with the order dated 16th December, 2011, the Respondent filed an Appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. By order dated 28th December, 2013, the CIT(A) dismissed the appeal. This, by holding that the Additional Commissioner of Income Tax i.e. appropriate authority has applied his mind and was satisfied with the reasons recorded by the Assessing Officer. It held that mere obtaining the approval from a higher authority i.e. CIT(A) will not vitiate the re-opening proceedings.

5 This led to the Respondent filing a further appeal from the order dated 28th December, 2013 to the Tribunal. This, appeal by the Respondent-Assessee's was allowed by the impugned order dated 25th March, 2011. This, by following the decision of this Court in *Ghanshyam K. Khabrani v/s. Assistant Commissioner of Income Tax 346 ITR 443* to

hold that, the approval/ permission to issue the notice dated 25th March, 2011 had not been granted by the Additional Commissioner of Income Tax, but by the Commissioner of Income Tax and, thus in breach of Section 151 of the Act.

6 Before considering the rival submissions, it is necessary to reproduce the relevant extracts from '*FORM FOR RECORDING REASONS FOR INITIATING PROCEEDINGS U/S. 148 OF THE ACT, AND FOR OBTAINING APPROVAL OF THE COMMISSIONER OF INCOME TAX, CENTRAL -V, MUMBAI*' tendered across the Bar. The Form itself indicates that the Assessing Office had submitted the proposal to obtain approval of the Commissioner of Income Tax before issuing the notice dated 25th March, 2011. The remark by Additional Commissioner of Income Tax on the form, is as under:-

“12. Remark of the Addl. CIT: Yes. I am satisfied. It is a fit case to re-open the case u/s. 147 of the Act. The notice u/s. 148 may be issued subject to CIT approval.

Sd/-

(VIRENDRA OJHA)

*Addl. Commissioner of Income Tax,
Central Range 10, Mumbai.”*

It, thereafter, was examined by the Commissioner of Income Tax who expressed his approval in the following form:

“13. Remark of the CIT

Yes, I am satisfied that in view of facts, ... as indicated in the Annexure, it is a fit case for issue of notice u/s. 148 of the I.T. Act.

Sd/-

(H.C.JAIN)

*Commissioner of Income Tax,
Central IV, Mumbai.”*

7 Further, the learned Counsel for the parties also produce before us a letter dated 24th March, 2011 addressed by the Additional Commissioner of Income Tax to the Commissioner of Income Tax and letter dated 25th March, 2011 from the office of the Commissioner of Income Tax to the Additional Commissioner of Income Tax. The letter dated 24th March, 2011 records the view of Additional Commissioner of Income Tax that he agrees with the reasons given by the Assessing Officer to issue the re-opening notice and seeks permission of the Commissioner of Income Tax to enable the Assessing Officer to issue the re-opening notice for Assessment Year 2004-05. While, letter dated 25th March, 2011 from the office of the Commissioner of Income Tax, addressed to the Additional Commissioner of Income Tax states that he has granted approval to the Assessing Officer to issue a notice under Section 148 of the Act. All the three communications, referred to herein above in paragraphs 6 and in this paragraph, are taken on record and marked A, B & C for identification.

8 Mr. Tejveer Singh, learned Counsel appearing for the Revenue submits that the Additional Commissioner of Income Tax is the jurisdictional Officer to grant sanction under Section 151 (2) of the Act. This, Officer he, submits has recorded his satisfaction with the reasons recorded by the Assessing Officer to issue the re-opening notice. Thus, the requirement of Section 151 (2) of the Act is satisfied inasmuch as the Additional Commissioner of Income Tax has found it to be a fit case for issuing of notice. It is further submitted that even though, the approval was obtained from the Commissioner of Income Tax for issuance of the notice, it does not take away the fact that the Additional Commissioner of Income Tax was satisfied with reasons recorded by the Assessing Officer.

Therefore, it is submitted that the notice dated 25th March, 2011, cannot be said to be without jurisdiction.

9 It is undisputed position before us that in terms of Section 151(2) of the Act, the sanctioning/ permission to issue notice under Section 148 of the Act has to be issued by the Additional Commissioner of Income Tax. We find that the Assessing Officer had not sought the approval of the Designated Officer but of the Commissioner of Income Tax. This is clear from the Form used to obtain the sanction. In any case, the approval/ satisfaction recorded in the form submitted for sanction of the Commissioner of Income Tax by the Assessing Officer reproduced herein above, it is clear that the Additional Commissioner of Income Tax had not granted permission to initiate re-opening proceedings against the Respondent-Assessee. The view of the Additional Commissioner of Income Tax was subject to the approval of his superior – the Commissioner of Income Tax. Thus, there was no final sanction granted by the Additional Commissioner of Income Tax for issuing the notice dated 25th March, 2011 to re-open the Assessment. Further, it is the Commissioner of Income Tax who directed the issuance of the notice under Section 148 of the Act to the Assessing Officer. Thus, it is very clear that the final sanction/ approval was that of the Commissioner of Income Tax as indicated in the Form and also in the two letters dated 24th March, 2011 and 25th March, 2011.

10 This Court in Ghanshyam Khabrani (supra) while dealing with almost similar/ identical situation has observed as under:-

“ The approval which has been granted is not by the Additional Commissioner of Income Tax but by the Commissioner of Income Tax. There is no statutory provision here under which a power to be

exercised by an officer an be exercised by a superior officer. When the statute mandates the satisfaction of a particular manner, it has to be done in that manner. In a similar situation, the Delhi High Court in CIT v/s. SPL's Siddhartha Ltd. (ITA No. 836 of 2011 decided on September 14, 2011) – since reported in [2012] 345 ITR 223 (Delhi) held that powers which are conferred upon a particular authority have to be exercised by that authority and the satisfaction which the statute mandates of a distinct authority cannot be substituted by the satisfaction of another. We are in respectful agreement with the judgment of the Delhi High Court.”

(emphasis supplied)

11 In the aforesaid facts, the view taken by the Tribunal, cannot be found fault with as it merely follows the decision of this Court in Ghanshyam Khabrani (supra). Therefore, the question as framed does not give rise to any substantial question of law. Thus, not entertained.

12 Accordingly, **Appeal dismissed.** No order as to costs.

(SANDEEP K. SHINDE,J.)

(M.S.SANKLECHA,J.)