

PRINCIPAL COMMISSIONER OF INCOME TAX vs. MAHLA REAL ESTATE (P) LTD.

HIGH COURT OF RAJASTHAN : JAIPUR BENCH

Judge(s) : Akil Kureshi & Ms. Rekha Borana, JJ.

IT Appeal No. 47 of 2020

Date of Decision 9th November, 2021

Source (2022) 6 NYPCTR 74 (Raj)

Statutes referred to :

Income-tax Act, 1961, ss. 148 & 292BB

Case decided in favour of :

In favour of : Assessee

Reassessment—Notice under s. 148—Absence of service of notice—Tribunal was came to the factual finding that before passing the order of assessment, notice of reopening of the assessment was never served on the assessee or its Authorised Representative—Tribunal has correctly observed that s. 292BB cannot be given a retrospective effect—Admittedly, the said provision was inserted in the IT Act in 2008—CIT vs. Chetan Gupta (2015) 126 DTR (Del) 401 : (2015) 62 Taxman.com 249 (Del) followed

(Para)

Conclusion :

Notice for reopening of the assessment was never secured on the assessee; s. 292BB is prospective and was not applicable for the relevant assessment year; reopening was therefore liable to be quashed.

Circular referred to

Circular No. 1 of 2009, dt. 27th March, 2009

Counsel appeared :

Anuroop Singhi, for the Appellant : Mahendra Gargieya & Devang Gargieya, for the Respondent

JUDGMENT

by the court :

This appeal has been filed challenging the judgment of the Income Tax Tribunal raising the following questions for our consideration:

(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the notice issued under s. 148 was not served upon the assessee, contrary to the findings recorded in Assessment order as well as in remand report, which duly mentions that the notice was served on the Authorised Representative of the assessee as well as on one Shri Chandan under the instructions of Director of the assessee-company ?

(ii) Whether, on the facts and in the circumstances of the case and in law, the Tribunal, Jaipur was justified in holding that s. 292BB is applicable prospectively, without appreciating the clarification issued by the CBDT vide its Circular No. 1 of 2009, dt. 27th March, 2009 [(2009) 222 CTR (St) 69], clarifying that the provisions of new s. 292BB shall apply in all proceedings which are pending on 1st April, 2008, thereby not restricting the applicability of the provisions to asst. yr. 2009-10 onwards ?

The issue pertains to the re-opening of assessment of the respondent-assessee for the asst. yr. 2007-08. The Tribunal in the impugned judgment came to the factual finding that before passing the order of assessment, notice of reopening of the assessment was never served on the assessee or its Authorised Representative. The following observation of the Tribunal need to be noted :

"After having heard the learned counsels for both the parties at length and after going through the facts of the present case, we find that there are certain undisputed facts in this case i.e. the AO has not admittedly sent any notice issued under s. 148 of the IT Act to the registered office address of the assessee-company at 12-13, Patel Colony, Laxmi Path, Sardar Patel Marg, Jaipur either through registered post or speed post and further the AO has made no efforts to serve notice through Affixture at the above registered office address. Although the assessee has categorically raised the objection about non service of notice under s. 148 of the Act but still no copy of notice issued under s. 148 of the Act was served upon the assessee at any subsequent point of time but before completing the order of assessment on 24th March, 2015. From the record, we also notice that there is no power of attorney of Shri Anand Sharma, chartered accountants given by the assessee, therefore, in such circumstances even if any notice was served on Shri Anand Sharma under s. 148 of the Act, but the same is of no consequence in the absence of any valid authority/authorization given by the assessee company to the said Shri Anand Sharma, chartered accountants. The learned CIT(A) has also pointed out that in the completed order sheet there no indication of the fact that any point of time any Power of Attorney or Authorization was filed by the assessee company in favour of Shri Anand Sharma on or before 14th March, 2014 for the year under consideration. Although the learned Departmental Representative submitted before us that the service of notice was effected on Shri Chandan but the fact remains that the said Shri Chandan was neither the employee of the assessee nor was authorized to receive such notice, and, therefore, in such a situation we canon treat the said alleged service on Shri Chandan to be a valid service in view of the provisions of s. 282 of the Act r/w Order 5 of the C.P.C. 1908. Even otherwise, the said Shri Chandan while allegedly receiving the notice on 14th March, 2014 had affixed the stamp of M/s Durga Motor Company which also goes to show that the said notice was never served upon the assessee."

In that view of the matter, we do not find that the Tribunal has committed any error in setting aside the assessment. The counsel for the Revenue however has strenuously argued that in view of s. 292BB inserted in the IT Act, mere defect in service of notice had to be factually ignored. The Tribunal has however correctly observed as held by the Delhi High Court in *CIT vs. Chetan Gupta (2015) 126 DTR (Del) 401 : (2015) 62 Taxman.com 249 (Del)* that s. 292BB of the Act cannot be given a retrospective effect. Admittedly, the said provision was inserted in the IT Act in 2008.

In the result, no question of law arises. The income-tax appeal is dismissed.