Tenet Tax & Legal Private Limited

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Slight delay in service of demand notice and copy of assessment order would not invalidate assessment

Summary – The High Court of Calcutta in a recent case of Subrata Roy, (the Assessee) held that assessment within limitation period cannot be doubted merely because demand notice is served after 47 days of said period.

Facts

- The assessee challenged the assessment order and demand notice received through post after 47 days from 31-12-2008 which was the last date for making such assessment..
- The assessee, before the Commissioner (Appeals), alleged that the assessment was barred by limitation and the demand notice was served 47 days after the limitation period and further, no evidence was there that the same was completed before the end of such limitation period.
- After perusing the assessment records and order sheets attached to the assessment record, the Commissioner (Appeals) observed that the assessment was completed on 31-12-2008 and it was signed on the same date along with the demand notice and was issued to the assessee within due time through department's notice server but the assessee refused to accept the same. Later on, such order and demand notice were sent by Registered post. It was also observed that the last date of hearing was on 15-12-2008, hence, on the basis of observations, the Commissioner (Appeals) held that the assessment was completed within the limitation period and same was not barred by limitation.
- On appeal, before the Tribunal, the Tribunal accepted the contention of the assessee and held that the revenue could not prove any documentary evidence that the assessment was framed on 31-12-2008 *i.e.,* on the date of the assessment order. He held that both the assessment order and demand notice was bad in law.
- On appeal:

Held

- The submission of the assessee that the assessment records were taken into account by the Commissioner (Appeals) without disclosing the same to the assessee is altogether without any merit. The appellate authority cannot be expected to dispose of an appeal without looking into the assessment records. Had the appellate authority relied upon any independent enquiry or the result of any such enquiry, then it would have been incumbent upon the appellate authority to inform the assessee about the result of such enquiry so as to afford an opportunity to the assessee to make his submission with regard thereto. But the appellate authority had no such obligation to disclose the assessment records to the assessee before taking them into account at the time of hearing of the appeal.

- An appellate court cannot be prevented from perusing the lower court records. It is a strange submission to make that the lower court records could not have been perused without giving an opportunity to the assessee. The submission that the Tribunal was justified in drawing an adverse inference is altogether without any merit. The Tribunal was hearing an appeal. The Tribunal was not taking evidence of the matter as a Court at the first instance would do. The question for consideration was whether the order dated 31-12-2008, could be said to have been passed on 31-12-2008 when the demand notice together with a copy of the order was served after 47 days. A period of 47 days time is not time long enough which can even make anyone suspicious as regards the correctness of the date of the order. In any case the presumption arising out of clause (e) of section 114 of the Indian Evidence Act, 1872 proves the fact that the order was passed on 31-12-2008. The same presumption once again would apply to the order dated 13-11-2009, passed by the Commissioner (Appeals). There is, as such, no reason to even entertain any doubt as regards the existence of the file including the order dated 31-12-2008. There is equally no reason to doubt that the assessment order was passed on 31-12-2008.