

Assessment order quashed as revenue failed to prove that it was dispatched in time with demand notice

Summary – The High Court of Allahabad in a recent case of Sincere Construction., (the Assessee) held that where on basis of available evidence appellate authorities came to conclusion that assessment order was passed after period of limitation, no substantial question of law arises for consideration

Facts

- The assessee was engaged in the execution of various contracts awarded by the Government Department. For the assessment year 2006-07 the assessee filed his return declaring certain taxable income.
- Subsequently, the case was picked up for scrutiny and it was alleged, that an assessment order dated 26-12-2008 under section 143(3) was passed and the income was enhanced.
- The assessee filed an appeal which was allowed on the ground that the assessment order was barred by time inasmuch as the assessment order was not passed before the expiry of the period of limitation.
- The Tribunal confirmed the order of the Commissioner (Appeals).
- On revenue's appeal:

Held

- Under section 153, the time limit for completion of the assessment for the relevant year was 21 months from the end of the assessment year. Consequently, in the instant case, the time limit for completion of the assessment was till 31-12-2008. The order sheet indicates that the case was discussed on 26-12-2008 and the order was reserved. The record which was produced before the appellate authorities indicates that the intimation of demand was served upon the assessee on 12-1-2009.
- Section 143 contemplates that when a return has been made under section 139 or in response to a notice sub-section (1) of section 142, such return would be processed and the total income would be determined and the tax and interest, if any, shall be computed. Further, an intimation shall be prepared or generated and sent to the assessee specifying the sum determined to be payable or the amount of refund due to the assessee. Section 156 provides that where any tax, interest, penalty, fine or any other sum is payable in consequence of an order passed under the Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.
- Rule 15 of the IT Rules read with Rule 38 of the IT Rules provide that notice of demand under section 156 is required to be served upon the assessee.

- In the light of the aforesaid provision, the first Appellate Authority held that no evidence was produced by the department to indicate that the assessment order was made on 26-12-2008 and the same was dispatched along with the notice of demand on or before 31-12-2008 to the assessee. On the other hand, the appellate authority has found that the acknowledgement slip pasted at the back of the notice bore the date of receipt as 12-1-2009. On this evidence the first Appellate Authority as well as the second Appellate Authority came to the conclusion that the assessment order was passed after the period of limitation.
- The question as to whether the assessment order was passed within the period of limitation or not is a question of fact based on appreciation of evidence produced before the Appellate Authorities.
- There is no perversity in the order of the Appellate Authorities. Consequently, for the aforesaid reasons, no substantial question of law arises for consideration.
- The appeal this fails and is dismissed.