

Objection couldn't be raised before CIT(A) if it wasn't raised before AO in reassessment proceedings

Summary – The High Court of Madras in a recent case of Venkatesan Raghuram Prasad, (the Assessee) held that where Assessing Officer reopened assessment of assessee and assessee participated in reassessment proceedings without raising any objection before Assessing Officer to effect that there was no valid issuance or service of reassessment notice upon assessee, such an objection could not be raised before First Appellate Authority

Facts

- The assessee sold a property during the year. An information was received by the revenue through the Annual Information Report (AIR) that upon verification it was found that the assessee had not filed his return for the relevant year. The Assessing Officer, after recording reasons, as to escapement of income and seeking approval thereof from the competent authority, viz., Joint Commissioner, issued notice under section 148(1). The said notice, claimed as sent through Registered Post (RPAD) came back un-served and that the same was finally 'served' through affixture. Thereafter, another notice, under section 142(1), was served. The assessee filed his return of income for admitting income after claiming exemption under section 54 in respect of the long-term capital gain arising on sale of property. The same came to be disallowed in the assessment proceedings, initiated through notice, under section 143(2), assessing the income for the year including long term capital gain.
- The assessee's challenged the service of notice under section 148 before the First Appellate Authority. However, the same did not find his favour, in view of section 292BB inasmuch as without doubt no objection *qua* the service of notice under section 148(1) was raised during the course of assessment proceedings, same could not be raised now before First Appellate Authority.
- On appeal, the Tribunal found that revenue submitted the following documents to prove issuance and service of notice upon assessee; (a). list of approved cases, which bore assessee's name with the approval date (for issue of notice under section 148(1)) (a system generated report); (b). The status report which carried the remarks by the approving authority as of being satisfied with the reasons recorded by the Assessing Officer that it was a fit for reopening, and which also bore several dates, including the date of approval of issue of notice under section 148 and of its service (a system generated report); (c). a system generated report on assessment, which carried several fields including the status of the assessment (noted as completed); (d). notice under section 148(1) which bore the endorsement 'RPAD', which was emphasized by the revenue during hearing, as being in the same hand as the signature signing the notice, *i.e.*, of the officer issuing the notice and which clearly appeared to be the case.; (e). order sheet entry, again in the hand of the Assessing Officer, as to the notice under section 148 being issued after obtaining administrative approval. There was no doubt to the authenticity and the validity of the afore referred documents, generated in the normal course of business, particularly considering the explanation by the revenue that the system was, as a part of procedure, closed at the end of each day. A post dated entry therein was thus precluded,

which might even otherwise result in different reports for the same day/s, establishing alteration. The same was accordingly considered sufficient to regard, at least *prima facie*, that the notice was indeed issued. Further, on inquiry, the revenue as per the written submissions explained that as a matter of procedure the person from the Postal Department visited the department on a regular basis, and that therefore as a matter of routine the documents were collected. The dispatch register was not available in view of the reorganization of the department. No material rebutting the said documents or contradicting the said explanation were brought on record. The same, even so, would make the facts disputed, precluding the legal challenge to admission of the legal aspect as to jurisdiction for want of issue of notice under section 148. The assessee had, as in the present case, admittedly not raised any objection in respect of the service of notice under section 148. Where no objection regarding a service of notice under section 148 was raised by assessee before the Assessing Officer, the argument that there was no valid service of notice, as advanced by the assessee before it failed.

- On appeal to High Court:

Held

- Section 147 and section 148 mandate certain conditions to be fulfilled for invoking the jurisdiction to reopen the assessment. Section 147 empowers the Assessing Officer to reopen an assessment, if the conditions prescribed therein are satisfied. The conditions are; (i) the Assessing Officer has to record the reason for taking action under section 147. It is on the basis of such reasons recorded in the file that the validity of the order reopening a assessment has to be decided. Recorded reasons must have a live link with the formation of the belief.; (ii) the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year.; (iii) the jurisdictional condition under section 147 is the formation of belief by the Assessing Officer that income chargeable to tax has escaped assessment for any assessment year.; (iv) No action can be initiated under section 147 after the expiry of 4 years from the end of the relevant assessment year unless the income chargeable to tax has escaped assessment by reason for the failure on the part of the taxpayer to disclose fully and truly all material facts necessary for his assessment.
- When a notice under section 148 is issued, the proper course of action, to be followed is file the return, if he so desires, to seek reasons for issuing the notices. The Assessing Officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the assessee is entitled to file objections to issuance of notice. The Assessing Officer is bound to dispose of the same by passing a speaking order and the assessee if desires can file a writ challenging the order or can proceed with the assessment. However the assessee has still a right to challenge the reopening of assessment after the assessment order is passed, before Appellate Authority.
- In *CIT v. Three Dee Exim (P.) Ltd.* [\[2012\] 20 taxmann.com 146/209 Taxman 116 \(Mag.\)](#), the Delhi High Court, held that what is contemplated under section 149 is 'issuance of notice' under section 148 and not the service thereof on the assessee and further held that the 'service of notice' under section 148 is only required before the assessment, reassessment or re-computation.

- Following the decision in *Three Dee Exim's* case (*supra*), one is not inclined to interfere with the order of the Tribunal. All the substantial questions of law are answered against the assessee. Hence, the Tax Case Revision Petition is dismissed.