

## **CIT wasn't required to give hearing opportunity to assessee before giving approval for assessment in search cases**

**Summary – The High Court of Karnataka in a recent case of Gopal S. Pandit, (the Assessee) held that There is no requirement of granting an opportunity of hearing to assessee by Joint Commissioner prior to giving approval as per section 153D to order of assessment or reassessment under section 153A**

**Where assessee had not used land for agricultural purposes for a minimum period of two years before its sale and, moreover, assessee, in his submissions had stated that said land was purchased for purpose of making a farm house and guest house for him and his family, exemption under section 54B would not be allowed**

### **Facts**

- The assessee had challenged validity of a block assessment order passed by the Assessing Authority, namely, Deputy Commissioner under section 153A read with section 143(3) for the block period of 2005-06 to 2009-10 in pursuance of search carried out at the residential premises of the assessee. The said order was passed by the Deputy Commissioner with prior approval of the Joint Commissioner. But, the said authority, namely, Joint Commissioner did not give any notice and opportunity of hearing to the assessee before granting approval to the draft assessment order of the Deputy Commissioner.
- On appeal, the Commissioner (Appeals) as well as the Tribunal held that the provisions of section 153D in its term, does not require any such opportunity of hearing to be given to the assessee by the authority who was to approve the draft assessment order to be passed by the Assessing Authority.
- In instant appeal the assessee submitted that clause 9 of Manual of Office Procedure, Volume-II [Technical], February, 2003 issued by the Directorate of Income Tax on behalf of Central Board of Direct Taxes, department of revenue, Government of India, had laid down the guidelines for giving such an opportunity of being heard to the assessee by the Supervisory Officer to the proposed block assessment.

### **Held**

- One is satisfied that the internal guidelines issued by the Central Board of Direct Taxes, as urged by the assessee, bereft of the statutory provisions in section 153D cannot bind the approving authority, namely, the Joint Commissioner to comply with the principles of natural justice by the said Authority. The Assessing Authority undoubtedly has of course given adequate and reasonable opportunity of hearing to the assessee and all objections on merits were considered by him. Merely because, section 153D requires a prior approval of the draft assessment order by the higher

authority, namely, the Joint Commissioner in the present case, because the assessment order was passed by the authority below the rank of the Joint Commissioner, the provisions of the act do not mandate that a fresh round of opportunity of hearing should be given to the assessee by such authority, namely, Joint Commissioner also even for approving draft assessment order. It is not a case where the assessee did not have any opportunity of hearing before any of the authorities to defend his case and some assessment of tax has been made against him fastening the liability of tax against the assessee. The Assessing Authority as well as the two Appellate Authorities who have concurrent powers of assessment as are available with the Assessing Authority, have admittedly heard the assessee on the merits of the case. Therefore, no substantial question of law in this regard can be said to be arising on the basis of the office guidelines which are for internal purposes of the department. They are not even statutory instructions issued under section 119 which if beneficial to assessee have been held to be binding on the authorities of the department. The assessee has also not been able to point out any prejudice caused to him on account of approving authority not giving him an opportunity of hearing.