

Re-assessment notice sanctioned by authority lower than Additional Commissioner was unsustainable: HC

Summary – The High Court of Bombay in a recent case of Aquatic Remedies (P.) Ltd., (the Assessee) held that When in terms of section 151(2), sanction to issue notice under section 148 has to be issued by Additional Commissioner, reopening of assessment with approval of Commissioner was unsustainable

Facts

- The assessee was engaged in the business of trading in pharmaceutical products. The Assessing Officer issued a notice under section 148 seeking to re-open the assessment. The assessee had challenged the issuance of the re-opening notice on the ground that sanction for issuing of the notice had to be obtained from the Additional Commissioner under section 151(2) while the sanction in this case was obtained from the Commissioner in breach of section 151. The Assessing Officer did not accept the above submission of the assessee and proceeded to pass a reassessment order under section 143(3) read with section 147.
- On appeal, the Commissioner (Appeals) held that the Additional Commissioner *i.e.*, appropriate authority had applied his mind and was satisfied with the reasons recorded by the Assessing Officer. Mere obtaining the approval from a higher authority, *i.e.*, Commissioner (Appeals) would not vitiate the re-opening proceedings.
- On further appeal, the Tribunal held that the permission to issue the notice was not granted by the Additional Commissioner but by the Commissioner and, thus, in breach of section 151.
- On revenue's appeal to the High Court:

Held

- Before considering the rival submissions, it is necessary to reproduce the relevant extracts from 'Form for recording reasons for initiating proceedings under section 148, and for obtaining approval of the Commissioner' tendered across the Bar. The Form itself indicates that the Assessing Officer had submitted the proposal to obtain approval of the Commissioner before issuing the reassessment notice. It, thereafter, was examined by the Commissioner who expressed his approval.
- Further, the parties also produce a letter addressed by the Additional Commissioner to the Commissioner and letter from the office of the Commissioner to the Additional Commissioner. The former letter records the view of Additional Commissioner that he agrees with the reasons given by the Assessing Officer to issue the re-opening notice and seeks permission of the Commissioner to enable the Assessing Officer to issue the re-opening notice. While, the letter from the office of the Commissioner, addressed to the Additional Commissioner states that he has granted approval of the Assessing Officer to issue a notice under section 148. All the three communications, referred to herein above are taken on record.

- It is undisputed position that in terms of section 151(2), the sanctioning/permission to issue notice under section 148 has to be issued by the Additional Commissioner. The Assessing Officer has not sought the approval of the Designated Officer but of the Commissioner. This is clear from the Form used to obtain the sanction. In any case, from the approval/satisfaction recorded in the form submitted for sanction of the Commissioner by the Assessing Officer, it is clear that the Additional Commissioner had not granted permission to initiate re-opening proceedings against the respondent-assessee. The view of the Additional Commissioner was subject to the approval of his superior - the Commissioner. Thus, there was no final sanction granted by the Additional Commissioner for issuing the notice to re-open the assessment. Further, it is the Commissioner who directed the issuance of the notice under section 148 to the Assessing Officer. Thus, it is very clear that the final sanction/approval was that of the Commissioner as indicated in the Form and also in the two letters.
- In the aforesaid facts, there is no fault in the view taken by the Tribunal.