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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on 4th February, 2015

+ ITA 236/2014

COMMISSIONER OF INCOME TAX-III Appellant

Through: Mr.Suruchi Aggarwal and Mr.Aamir
Aziz, Advs.

versus

SHRI SHYAM SUNDER INFRASTRUCTURE (P) LTD

..... Respondent

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The Income Tax Appellate Tribunal's (ITAT) order dated 22.11.2013 allowing the assessee's appeal - ITA 206/Del./2013 - has been questioned by the Revenue in the present appeal under Section 260-A of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The brief facts necessary for deciding this case are that the respondent's assessment was reopened by notice under Section 147 of the Act. It is stated that the original assessee, which had filed the returns on 30.05.2003 was one 'Shalom Exim Pvt. Ltd.' which was incorporated on 27.02.2003. Its name was subsequently changed to 'Mamram Developers

Pvt. Ltd.’ on 03.11.2003 and yet later on 27.11.2010 as ‘Sh.Shyam Sunder Infrastructure Pvt. Ltd.’

3. Upon receiving notice of reassessment under Section 148 of the Act, the successor company reiterated that it would stand by original return filed on 30.05.2003. The assessment was, however, completed under Section 144 of the Act. The assessee appealed on diverse grounds including firstly on the question of lack of jurisdiction of the Assessing Officer (AO) to complete the assessment, *inter alia*, for the reason that the concerned AO who sought to complete the proceedings was not vested with authority. The assessee also relied upon provision of Section 127 of the Act. The CIT(Appeals) rejected the contentions as to the jurisdiction as well as the merits of the appeal. The ITAT, however, accepted the assessee’s contention and held that the AO lacks jurisdiction since the original assessee was subject to assessment by AO of Ward 6(2) whereas in the present instance the office of Ward 8(1) issued notice and Ward 8(3) completed the proceedings.

4. The Revenue urges that the findings of the ITAT are unsupportable in law and relies upon Section 124(3) to this effect. It also relies upon the judgment of Allahabad High Court in *Commissioner of Income-Tax vs. British India Corporation Ltd.* (2011) 337 ITR 64. Section 124 of the Act is extracted below:

124. Jurisdiction of Assessing Officers

(1) Where by virtue of any direction or order issued under sub- section (1) or sub- section (2) of section 120, the Assessing Officer has been vested

with jurisdiction over any area, within the limits of such area, he shall have jurisdiction-

(a) in respect of any person carrying on a business or profession, if the place at which he carries on his business or profession is situate within the area, or where his business or profession is carried on in more places than one, if the principal place of his business or profession is situate within the area, and

(b) in respect of any other person residing within the area.

(3) No person shall be entitled to call in question the jurisdiction of an Assessing Officer-

(a) where he has made a return under sub- section (1) of section 139, after the expiry of one month from the date on which he was served with a notice under sub- section (1) of section 142 or sub- section (2) of section 143 or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under sub- section (1) of section 142 or under section 148 for the making of the return or by the notice under the first proviso to section 144 to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.

(4) Subject to the provisions of sub- section (3), where an assessee calls in question the jurisdiction of an- Assessing Officer, then the Assessing Officer

shall, if not satisfied with the correctness of the claim, refer the matter for determination under sub- section (2) before the assessment is made.

(5) Notwithstanding anything contained in this section or in any direction or order issued under section 120, every Assessing Officer shall have all the powers conferred by or under this Act on an Assessing Officer in respect of the income accruing or arising or received within the area, if any, over which he has been vested with jurisdiction by virtue of the directions or orders issued under sub- section (1) or sub- section (2) of section 120.]

5. Learned counsel for the assessee contended that the ITAT possessed jurisdiction to return a finding on whether the AO's order was a nullity, and can give the verdict that such adjudication cannot go into the merits of such of the proceedings. Facially, Section 124(3) stipulates a bar to any contention about lack of jurisdiction of an AO. It is not as if the provisions of the Act disable an assessee from contending that in the given circumstances the AO lacks jurisdiction; rather Section 124(3) limits the availability of those options at the threshold. The assessee upon receipt of notice of the kind mentioned in Clause (a) and (b) of sub-section 3 has the option to urge the question of jurisdiction; the expressed tenor and terms of the provisions clarify that such objections are to be articulated at the threshold or at the earlier points of time. The two points of time specified in Section 124(3)(a) are as under:

(i) Within one month from the date of service of notice or;

(ii) After completion of assessment – whichever is earlier.

6. In the present case, there is no dispute that the reassessment notice was issued by the AO on 22.03.2010; upon its receipt, the assessee reiterated its earlier return on 21.04.2010. Since its response led to objections as to the jurisdiction, it lost the capacity to urge the ground by virtue of the provision under Section 124(3)(a). This condition has been obviously overlooked by the ITAT which proceeded to set aside the assessment and completed the reassessment proceedings. The impugned order is consequently set aside; the question of law urged by the Revenue is answered in its favour. The matter is remitted for consideration on the merits of the appeal concerning the additions made in the reassessment proceedings.

7. The appeal is allowed in above terms.

8. The parties are directed to be present before the ITAT on 16.03.2015, which shall proceed thereafter.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

FEBRUARY 04, 2015

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